

No. 14,431

IN THE

**United States Court of Appeals  
For the Ninth Circuit**

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S. H. P. VEVELSTAD, WILLIAM L. PAPE, and  
AURORA NICKEL COMPANY, a corporation,  
*Appellants,*

VS.

E. MILES FLYNN,

*Appellee.*

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**BRIEF FOR APPELLANTS.**

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**BRIEF FOR APPELLANTS.**

---

**STATEMENT OF PLEADINGS AND FACTS.**

**A. Jurisdictional Statutes.**

This action was brought by Appellee to determine the alleged adverse claim of Appellants created by their mining claims as against Appellee's alleged mining claims on Yakobi Island, Alaska, which action was brought under Section 56-1-91, ACLA 1949, which reads:

“§ 56-1-91. Action to Determine adverse claim. Any person in possession, by himself or his tenant, of real property may maintain an action of an equitable nature against another who claims an estate or interest therein adverse to him, for the purpose of determining such claim, estate, or interest.”

Section 56-1-91, ACLA 1949, Volume 3.

A final judgment was entered by the learned trial court on April 24, 1954 (P.R. 119-122), from which Appellants have appealed to this Honorable Court under Section 1291 of the new Federal Judicial Code, which reads:

“Section 1291. Final Decisions of District Courts. The courts of appeal shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. June 25, 1948, c. 646, 62 Stat. 929.”

Title 28 USCA Judiciary & Judicial Procedure, Sec. 1291.

The entire record shows the jurisdiction of both the trial and this Court; but reference is particularly made to Appellee's Complaint and its title (P.R. 3); Appellee's Amended Complaint (P.R. 53), particularly paragraphs 6 and 7 thereof (P.R. 60-61); and Appellee's Answer (P.R. 67 to 75.)

See Appendix for pertinent United States and Territorial Mining Laws; also Section 112, Circular 430, United States Department of Interior, relative to Canadians right to locate mining claims in Alaska.

## **B. Pleadings.**

*Trial*, which commenced at 2 p.m., December 15, 1953 (P.R. 135), and continued for several days, was had upon Appellee's Amended Complaint and Appellants' Answer thereto, setting up Four Defenses with a Counterclaim denominated as such. No Reply was served or filed.

*Appellee's Amended Complaint* (P.R. 53-61), alleged that Appellee was the owner of and had located 102 lode mining claims on Yakobi Island, Alaska, during October and November, 1952 (P.R. 53); that Appellee made discoveries on those claims and recorded within 90 days after location certificates of location thereof with the Sitka Recorder, within whose precinct they were situated (P.R. 58-59); that Appellee was *in actual possession of the area embraced within the boundaries thereof as herein set forth* (P.R. 59); that Appellants claimed some right, title, or interest in and to the ground area embraced within those boundaries by virtue of the location of certain mining claims the exact location whereof Appellee was unable to fix by examination of ground markings or otherwise but that Appellants' claims were invalid (P.R. 60) and constituted a cloud upon Appellee's title to its alleged 102 mining claims (P.R. 60); that the value of Appellee's alleged mining claims was thereby adversely affected and it was necessary for a court of equity to determine Appellee's and Appellants' conflicting claims and rights (P.R. 60-61).

*Appellee's Amended Complaint* did not describe the individual boundaries of his 102 mining claims, nor did it incorporate in it by reference the descriptions of any of those claims as they appear on the records of the Sitka Recorder; but described his pretended 102 mining claims by perimeter only, and in three separate groups (PR 54-57); also, by a plat, marked Exhibit "A" (PR 58), which was not reproduced in the Printed Record as Appellants had anticipated it would be inasmuch as it was attached to and specifically incorporated into the allega-

tions of the Amended Complaint, which specifically alleged: “that the boundary lines of each of said claims is marked on said plat in accordance with the location of such lines on the ground” (PR 58), thereby making it a part of that pleading under Rule 10(c) FRCP.

*Appellee’s Complaint* (PR 3-8), which was superseded by his Amended Complaint, neither described his pretended 102 mining claims either individually or by reference therein to the Sitka Recorder’s records, nor did it do so by any attached plat, but it described them by perimeter only; however, in four groups instead of in three. Furthermore, the perimeters therein do not close and do not accord with those in Appellee’s Amended Complaint.

Neither *Appellee’s Amended Complaint* nor his *Complaint* defined the extent of the alleged conflict of Appellants’ 27 lode claims with his pretended 102 mining claims, or with which of those 102 claims they conflicted, or named them or gave the number of them.

*Appellants’ Answer* (PR 67-75) set up Four Defenses with a Counterclaim denominated as such (PR 73).

*First Defense* (PR 67): Appellee’s pleading failed to state a claim against Appellants upon which relief could be granted.

*Second Defense* (PR 67-68): alleged that Appellee’s 102 pretended mining claims constituted a cloud upon Appellants’ title to their 27 mining claims (PR 68); denied (PR 67) all of Appellee’s allegations by denial of Paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of the Amended Complaint (PR 53-61); but admitted that Appellee in October and

November, 1952, made his 102 pretended mining claim locations and recorded pretended *location notices* thereof with the Sitka Recorder; that the situs of all of them was on Yakobi Island, Alaska, within the jurisdiction of the trial court, except portions of the pretended Pelican claims 27, 28, 29 and 30 were situated on the foreshore or in the deep and navigable waters of Lisianski Strait; that the outer boundaries of Appellee's 102 pretended mining claims are described in said Pleading, according to said plat, marked Exhibit "A" attached thereto (which as stated was not reproduced in the Printed Record), by group perimeters; that Appellants owned and held prior title and possession of such ground area, including the mineral rights, of their 27 mining claims as was embraced within the boundaries of his 102 pretended claims (PR 67-68).

*Third Defense* (PR 68-73), Par. 1: Alleged ownership and possession of Appellant Aurora Nickel Company, an Alaskan corporation, and prior location by Appellant Pape on October 1, 1950, of the unpatented lode mining claims Rita No. 1 through No. 4, Hope No. 1 through No. 12 and Svere, which on October 27, 1950, Pape conveyed to Appellant Corporation, and ownership and possession of Appellant Corporation, and its prior location on July 1, 1952, of the unpatented lode mining claims Doris No. 1 through No. 4, Takanis No. 1, Svere No. 2, and Beach No. 1 through No. 3, and ownership and possession of Appellant Corporation, and its prior location on June 8, 1953, of unpatented lode mining claim Svere No. 3 (PR 68-69); locations made on public lands; made discoveries of valuable minerals or adopted known pre-



vious discoveries (PR 69); plain signs or notices containing name of lode claim, name of locator, date of location, number of feet in length along vein each way from point of discovery, and width on the side of center of lode or vein, posted on each claim on date of respective location upon surface or adjacent to discovery point (PR 69); erected on each claim in center of each end line and at each corner or angle of the claim substantial monuments of stone or posts, not less than three feet in height nor less than three inches in diameter, hewn and marked with the name of claim, position or number of the monument and direction of boundary lines, and cut out, blazed, or marked the boundary lines so each claim could be readily traced (PR 69-70); within 90 days after respective locations Appellants recorded *certificates of location* with the Sitka Recorder, within whose precinct claims are located (PR 70); during the assessment years ending respectively noon July 1, 1952, and July 1, 1953, did more than \$100 worth of annual assessment work and labor upon and for the benefit of Svere, 12 Hope, and 4 Rita lode claims, and recorded on July 25, 1952, and July 6, 1953, with the Sitka Recorder Appellant Corporation's respective affidavits of doing that assessment work and labor during those two assessment years (PR 70); on June 22, 1953, Appellant Corporation made amended locations of the Svere, Svere No. 2, Doris No. 1 through No. 4, and Hope No. 1 through No. 12 lode mining claims (PR 70); made discoveries of valuable minerals or adopted previous known discoveries (PR 70); plain signs or notices containing name of claim and of locator, date of location, number of feet in length along vein each way from point of discovery, and width on the side of the

center of the lode or vein, posted on the date of location upon the surface or adjacent to the discovery point (PR 71); erected on each claim in center of each end line and at each corner or angle of claim substantial monuments of stone or posts, not less than 3 feet in height or less than 3 inches in diameter, hewn and marked with name of claim, position or number of the monument and direction of boundary lines, and cut out, blazed, or marked the boundary line so each claim could be readily traced (PR 71); within 90 days thereafter and on July 6, 1953, Appellants recorded *amended certificates of location* with the Sitka Recorder (PR 71).

*Par. 2:* Appellant Vevelstad is President and stockholder of and financially interested in financial success of Appellant Corporation (PR 71); Appellant Pape holds a contract with Appellant Corporation to receive one million tons, or the monetary proceeds derived therefrom, of such nickel and other ores as are mined from Appellant Corporation's 27 lode mining claims (PR 71).

*Par. 3:* Appellee's location of his pretended 102 lode mining claims, in so far as they embrace and cover the same ground area as embraced and covered by Appellants' 27 lode mining claims was made subsequent in time and after Appellants had located and taken possession of their 27 lode mining claims (PR 71-72); Appellee did not make a discovery of valuable minerals upon each or any of his pretended 102 lode mining claims (PR 72); or, if he did, Appellee did not post on the surface at or adjacent to the point of discovery a plain sign or notice containing the name of the lode claim, the name of the locator or locators, the date of the location, and the

number of feet in length claimed along the vein each way from the point of discovery, and the width on each side of the center of such lode or vein and did not erect on each or any of said claims on the vein at the center of each end line and at each angle or corner of the claim substantial monuments of stone or set posts, not less than three feet in height nor less than three inches in diameter hewn and marked with the name of the claim, the position or number of the monument and the direction of the boundary lines, and did not cut out, blaze or mark the boundary lines of each or any of said claims so that they could be readily traced and did not actually locate upon the ground said claims upon any vein or veins (PR 72); that neither the pretended boundaries nor the pretended courses of Appellee's 102 pretended lode mining claims as he pretended to locate and lay them out upon the ground accord with or conform to either the pretended location notices thereof which Appellee recorded with the Sitka Recorder or with the descriptions thereof as set out in his Amended Complaint, nor did Appellee file for record at the time of or within 90 days after making his pretended locations *certificates of location* of any of his pretended 102 lode mining claims (PR 72-73).

*Par. 4:* Appellants are now and at all times since their respective dates of locations have been entitled to the exclusive right of possession and enjoyment of all of their 27 lode mining claims (PR 73); Appellee's pretended locations and recording of pretended location notices of his pretended 102 lode mining claims constitute clouds upon Appellants' title to their 27 lode mining claims to the extent of the conflict in ground area between Appel-



lants' said claims and Appellee's pretended claims (PR 73).

*Fourth Defense and Counterclaim* (PR 73-74): As stated, Appellants *denominated* their Fourth Defense as a *Counterclaim* in accordance with Rule 7(a) FRCP.

*Par. 1:* Appellants realleged and by reference to their Third Defense incorporated all of it in their *Fourth Defense and Counterclaim* (PR 73).

*Par. 2:* Appellee, sometime in October and November, 1952, *then knowing* that Appellants were the owners and possessors of their 27 lode mining claims and were negotiating for the sale thereof and the extraction, mining, and sale of the valuable minerals therein, *wilfully and maliciously trespassed* thereupon by the pretended locations, the location notices whereof Appellee recorded with the Sitka Recorder, of Appellee's pretended 102 lode mining claims, and *blanketed the entire area* embraced within Appellants' 27 lode mining claims for the purpose of preventing Appellants not only from excavating and mining or arranging for the excavating and mining of the valuable minerals in Appellants' mining claims but also from selling them and the valuable mineral therein and for the further purpose of thereby enabling Appellee, on behalf of unknown persons represented by him, to prevent nickel in Alaska from reaching the market to compete with nickel mined in other parts of the world, particularly in Canada (PR 73-74).

*Par. 3:* Appellee by his said actions prevented Appellants from so excavating, mining and selling their 27 mining claims and the valuable minerals therein, and thereby damaged Appellants in actual loss of profits that

they would otherwise have made of not less than five million dollars and the further sum of fifteen million dollars by way of exemplary damages (PR 74).

*Prayer:* That Appellants' title to their 27 lode mining claims might be quieted and all claim of Appellee thereto dissolved and held to be invalid and for judgment against Appellee for five million dollars actual damages and for fifteen million dollars exemplary damages, and for Appellants' costs and disbursements, including a reasonable attorney fee (PR 74-75).

*Reply:* Appellee served and filed no Reply notwithstanding Appellants' Fourth Defense was denominated as a *Counterclaim* under Rule 7(a) FRCP, which pleaded special damages in accordance with Rule 9(g) FRCP, and constituted a *Compulsory Counterclaim* under Rule 13(a) FRCP, to which a Reply was required under Rule 7(a), *ibid*, nor did Appellee serve and file any Motion under Rule 12 FRCP, or otherwise, against Appellants Fourth Defense and Counterclaim or any part of their Answer.

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### JURISDICTIONAL FACTS.

Each party sought the aid of the District Court for the First Judicial Division of Alaska to quiet title as against the other to the lode mining claims respectively claimed by each of them, all of which claims are situated on Yakobi Island, except portions of Appellee's Pelican claims 27, 28, 29 and 30 are situated on the foreshore of or in the deep and navigable waters of Lisianski Strait, which bounds Yakobi Island on the east, in the First Judicial Division of Alaska. (Complaint, PR 3-8;

Amended Complaint, PR 53-61; Answer, PR 67-75). Appellants in their Answer pleaded a Compulsory Counterclaim (PR 73-74) for five million dollars actual damages and fifteen million dollars exemplary damages. Trial was had before the Court without a jury.

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### **STATEMENT OF THE CASE.**

Appellee on June 23, 1953, filed his Complaint (PR 3-8). On July 17, 1953, Appellants moved (PR 44-46) against the Complaint because of its failure to state a claim upon which relief could be granted and also to make it more definite, specifying, under Rule 12(e) FRCP, its defects and the details desired. In the absence of the trial Court, no hearing was had on that motion, and on August 26, 1953, Appellee filed his Amended Complaint (PR 53-61) wherein he alleged he had located his claims in October and November, 1952 (PR 53), not September and October, 1952 (PR 6) as alleged in his Complaint and described by perimeter courses in three groups (PR 54-57), not in four groups as, also by different perimeter courses than, in his Complaint (PR 4-6). Otherwise, except for some greater details about his discoveries, locating, posting, and recordings, and a reference description to a plat, marked Exhibit "A", attached to and specifically made a part of his Amended Complaint (which plat has not been reproduced in the printed record), his Amended Complaint closely paralleled his Complaint. In neither did he name, describe, or give the number of Appellants' claims, or state the extent of the conflict of any of them with any of the 102 claims he claimed.

In the meantime on July 15, 1953, Appellants under Rule 33 FRCP propounded 47 Interrogatories (PR 11-19), which Appellee answered under oath on August 10, 1953 (PR 20-44), in which he said that Eric Norppa helped locate all of the claims except Mayflower Claims Nos. 1, 10, and 11 (PR 28).

On September 1, 1953, Appellee served notices upon Appellants of taking oral depositions in Seattle, Washington, on September 10, 1953, of Appellant Pape (PR 62-63) and on September 9, 1953, of Appellant Vevelstad (PR 63-64).

Appellee later abandoned taking Vevelstad's deposition, but took Pape's deposition (PR 343-432), which was offered and received in evidence in Pape's absence at the trial as Appellants' Exhibit D (PR 340-343), the learned trial Court stating that if he ultimately ruled it to be admissible he would read it (PR 343), but, notwithstanding the Court had said that Pape was a material witness (PR 135), he later ruled it inadmissible on the ground that it was taken by Appellee for discovery purposes only and that it had been admitted subject to Appellee's Objection (Opinion, PR 99). Appellants do not understand that the colloquy (PR 340-342) between the Court and Appellee's counsel Ward discloses that Appellee objected to the admission of the deposition; in fact, Ward said "I have no objection to offering the 102 pages of this deposition. There is probably 1/2 a page that I would object to \* \* \*." Whereupon the Court said: "Well, I don't think the Court could consider an objection of that kind because it assumes that the Court is going to dig it out." (PR 341-342.) Appellee's counsel Banfield previously in his oral argument against Appellants' Motion



for Continuance of Trial (PR 76-78) based upon Pape's absence had suggested: "Why don't they prove what Mr. Pape did by that deposition?" (PR 147). Appellants' counsel Robertson was in attendance when Pape gave his deposition, but Appellee's counsel Ward (PR 341) admitted he did not examine Pape.

The Court's refusal to admit Pape's deposition is the subject of Appellants' Statement of Point 5 (PR 718).

*Answer* (PR 67-75): On September 11, 1953, Appellants filed their Answer, the Four Defenses and Compulsory Counterclaim thereof having heretofore been detailed (Supra, pp. 4-10).

Appellants' First Defense (PR 67) that Appellee's Pleading failed to state a claim upon which relief could be granted was in effect substantially pleaded affirmatively in Appellants' Third Defense, particularly Paragraph 3 (PR 71-73), detailing the manner in which Appellee's locations were not located, described, boundary marked, and discoveries made or certificates of location recorded as required under the United States and Territorial Mining Laws, but, as stated in Paragraph 5, Appellants' Motion for New Trial (PR 108), were located, if at all, unlawfully by blocks, which is the subject of Appellants' Statement of Point 11 (PR 719). Furthermore, Appellee's Amended Complaint (PR 53-61) did not allege; in fact, Appellants contend he did not prove, the definite extent, if any, of the conflict between his purported claims and Appellants' Claims, which is the subject of Appellants' Statement of Point 16 (PR 720) and which failure of allegation and proof is within the scope of Appellants' Statement of Point 18 (PR 720), and of

Paragraph 14 of Appellants' Motion for New Trial (PR 109).

Appellants' Second Defense (PR 67-68) while generally speaking constitutes a qualified denial of the allegations of Appellee's Amended Complaint further alleges that Appellee's pretended 102 lode mining claims constituted a cloud upon Appellants' title to their 27 lode mining claims.

Appellants' Third Defense (PR 68-73) also alleged that Appellee's pretended 102 lode mining claims, their locations and recording of pretended location notices constituted a cloud upon Appellants' title to their 27 lode mining claims, and affirmatively pleaded their prior location, with the details thereof as well as of the posting, marking and blazing boundaries, recording of certificates of location, and prior use and possession, and the detailed defects in Appellee's pretended locations, discoveries, markings, blazings, and recordings.

Appellant's Fourth Defense and Counterclaim (PR 73-74) pleaded a Counterclaim, denominated as such under Rule 7(a) FRCP, which was Compulsory, Rule 13(a), *ibid*, and required a Reply under Rule 7(a), *supra*.

Appellee's failure to Reply as well as to deny by evidence Appellants' proof through witness Vevelstad (PR 544-550) that Appellants had suffered five million dollars actual damages and fifteen million dollars exemplary damages is the subject of Appellants' Statement of Point 10 (PR 719) and 18 (PR 720).

Appellee on September 21, 1953, moved for an immediate trial (PR 75). On October 2, 1953, the Court set the

trial for December 14, 1953, to follow another case (PR 76). Appellants submit that minute order does not fully show what occurred on October 2, 1953; but that the full details are stated in Appellants' counsel Robertson's affidavit, which has never been denied, of December 14, 1953, viz.:

“That affiant, in open court, on October 2, 1953, when Plaintiff's attorney, Norman C. Banfield, requested that this action be set for trial on December 14, 1953, then informed the Court and said Banfield that affiant understood that Pape would be in the Military Sea Transportation Service in the Far East on December 14, 1953, and would not be able to be present on said suggested trial date; that the Court then stated, as affiant understood, that if that situation arose, affiant, on behalf of Defendants, could file a motion for trial at a later date;”

and of his statement on oral argument:

“And I understood your Honor then to tell me, ‘Well, if that is true, you could file a motion to that effect and have it continued’ ” (PR 137),

other than Appellee's counsel Banfield in his oral argument against Appellants' Motion for a Continuance (PR 76-78) said:

“And, when the Court told Mr. Robertson, not that he could come in here and file a motion, that wasn't what the Court said. The Court said: ‘Well, if your party can't be here, you can make the proper showing’ ” (PR 149).

Appellants' counsel doesn't claim an infallible memory, but does contend that in any event a proper and sufficient showing was made for a continuance.

Appellants further protested holding the trial on December 14, 1953, or until after February 1, 1954, by writing on October 7, 1953, a letter (Appendix p. 17) to Appellee's counsel Faulkner, Banfield & Boochever, a copy whereof was transmitted to the Clerk of the trial Court (PR 85-86), and by writing on November 12, 1953, a letter (Appendix p. 18) to the trial Judge and by writing on November 28, 1953, a letter (Appendix p. 19) to the trial Judge, wherein he informed the Court that Pape was now on a government vessel enroute or on a secret mission to the Far East and would not return to the States until the latter part of January (1954), and that Appellants were filing their hereinafter mentioned Motion for a continuance of the trial, a copy of which letter with copy of said Motion was delivered to Appellee's said counsel, who acknowledged receipt thereof by their letter of November 30, 1953, to the trial judge, and by writing on December 7, 1953, a letter (Appendix p. 20) to the trial judge, informing him of Pape's absence in the Far East in the Military Sea Transportation Service and that there was no means of obtaining his return by December 14, 1953, a copy of said letter was mailed to Appellee's said counsel who acknowledged receipt of it by their letter of December 8, 1953, to the trial judge (PR 85-86; 137-138).

Appellants' counsel's letter of December 7, 1953 (Appendix p. 20) was written prior to their being informed by attorney Banfield that the Court intended to deny their motion for continuance but after Appellants on November 30, 1953, filed their Motion (PR 76-78), which was verified by Appellants' counsel on information and belief.



No refutation is made of Appellee's counsel Banfield's telephone conversation with Appellants' counsel Robertson on December 8, 1953, and that that was Appellants' first knowledge that the learned trial Court intended to deny their motion, viz.:

Banfield: "You know Judge Folta is not going to pay any attention to your motion." Robertson: "No; I have never heard from Judge Folta in any way about it. I have given you copies of various letters I have written to Judge Folta about it." Banfield: "Judge Folta told me just before he left for Anchorage" (December 1, 1953) "he wasn't going to pay any attention to your motion because you made it on information and belief." Robertson: "Well, I have tried to give you notice ever since October 2nd that we couldn't possibly go to trial on December 14, 1953, that Mr. Pape would be in the Far East." Robertson: "I am still standing on that motion" (PR 137).

which statement attorney Banfield substantially admitted (PR 149) in his oral argument against Appellants' Motion for continuance, and in which telephone conversation he also said that Appellee was filing Appellee's counsel Ward's affidavit (PR 78-81) in opposition to Appellants' Motion, which affidavit was filed on December 8, 1953, and wherein Ward stated he had talked between July 20 and August 31, 1953, about a settlement with Pape (PR 78-79), which was subsequent to Appellants' service on July 15, 1953, of their Interrogatories to Appellee (PR 11-19), also after July 22, 1953, subsequent to Appellants' service on July 22, 1953, of their Motion for Production and Inspection of Documents (PR 47-48), also after July

28, 1953, subsequent to Appellee's Motion for Extension of Time to Answer Interrogatories and Ward's affidavit of July 28, 1953, (PR 49-50), also after August 10, 1953, subsequent to Appellee's Answers to Interrogatories (PR 20-44) (*all whereof Appellants submit discloses that attorney Ward talked with Pape about this suit after knowing that Pape was represented by counsel therein*).

Thereupon Appellants on December 14, 1953, filed in support of their *Motion for Continuance* (PR 76-78) Appellant Vevelstad's supplemental affidavit (PR 82-83) and Robertson's supplemental affidavit (PR 83-87) together with the Military Sea Transportation Service's original letter stating that Pape was employed as Chief Electrician aboard ships by that Service and was then on a voyage to the Far East and the ship would not return to Seattle until after December 15, 1953, and that it was impossible for Pape to return to the United States ahead of the scheduled return of his ship (PR 87-88).

Appellants were then unable to file an affidavit by Pape to refute Ward's affidavit (PR 78-81) or for any other purpose because he was then on the Pacific as stated in the Military Transportation Service's letter (PR 87-88) and in Vevelstad's affidavit (PR 82-83), and as shown by Ward's affidavit (PR 79-80) whereby it clearly appears that Ward knew when he made his affidavit on December 1, 1953, that it couldn't be refuted by Pape because the latter was on the high seas.

With this showing before it, the Trial Court on December 15, 1953, denied Appellants' Motion for Continuance and required them to go to trial in the afternoon of that day unless the Appellants' would pay lump sum costs of

\$2700, which Appellants refused to do (PR 88-89), in the itemization whereof the Court said it was not interested (PR 156).

The December 15, 1953, order denying Appellants' Motion for Continuance was made after oral argument by both parties' counsels (PR 135-159) during which no denial was made of Appellants having given advance notice that they could not go to trial in Pape's absence to both the Court and Appellee through the four letters (Appendix pp. 17-21) as stated in Robertson's affidavit (PR 85-86) and in his argument (PR 136-137).

At the close of the argument Appellants informed the Court that they contended a denial of their motion was an abuse of discretion (PR 158), which abuse of discretion is the basis of or involved in Appellants' Statement of Points 1, 2, 3 and 4 (PR 717, 718).

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### **EVIDENCE.**

*Exhibits* (PR 133-134): None are printed in the Printed Record, except Pape's deposition, Appellants' Exhibit D (PR 342-432); nor is the map that was marked as Exhibit A attached to and incorporated (PR 58) in the Amended Complaint (Rule 10(c) FRCP). Appellants will later specify those exhibits which they include in the Appendix hereto.

*Appellee's Case in Chief*: Three witnesses, i.e.: Johnson (PR 160-211), a surveyor, who was not a witness to or present at the locating of any of either Appellee's or Appellants' claims, but who first was on Yakobi Island

about six months after Appellee's claimed locations and about ten months after the last of Appellants' claims were located except Svere 3 on June 8, 1953 (PR 169), when Johnson was not on Yakobi Island (PR 182); Norppa (PR 211-265), a Canadian mining engineer (PR 226), who helped Appellee stake Appellee's claims (PR 212-213) in October and November, 1952 (PR 53); who made no examination of the outcrops and made no discoveries (PR 251) and put up no discovery posts (PR 226-227); who couldn't tell how the veins run and had no idea (PR 230); who didn't put all the corner monuments on any one of the claims (PR 248); who described the posts and monuments that he constructed as some of the trees were quite good sized and some were small, but didn't know the average size of the rock monuments; just made a pile, pretty good size (PR 232); and who couldn't recall what procedure they used in running lines in November, 1952 (PR 238); and Appellee himself (PR 265-326), a self-admitted Canadian citizen (PR 265) and graduate mining engineer (PR 265); whose previous familiarity with nickel ores on Yakobi Island had been gained from mining bureau reports (PR 268); who described the norite outcrops on Yakobi Island as of a size as many as 6 or 7 claims in width to cover the norite outcrops; large masses on the surface crop up through the overburden; the Bureau of Mines' work in digging on low ground, some of which is covered with overburden, and making pits and exposing the underlying norite, indicates the values were disseminated irregularly through the norite; the largest deposits of ore were up to 200 feet thick, and up to 1000 feet long. A great many small



ones are scattered through the norite mass; outcrops on the surface are indicated by rust; the ore is contained in the norite rock and is recognizable by rusty stains. I closely examined the ore. I broke a great many pieces of rock that were rusty on the surface. In every instance I found effects of mineralization through the rock when I broke into fresh rock that was rusty on the surface (PR 265-271). On all claims where I put discovery posts I followed along the claim's center line until I came to a rock outcrop showing rust, indicating mineralization, where I put the discovery post. In every instance I went along the line to where the rock was massive and in place, rust on the surface, that when I broke it with an axe showed mineralization (PR 271-272). I didn't take samples from each claim. I took samples of the ore for my own information to determine just what was ore and to check the Bureau of Mines' statements. I took those samples for my own information from the pits and from the tunnel and various parts where the Bureau of Mines opened up some ore. When I made a discovery I just knocked off a piece of rusty norite with my axe, took a look at it and convinced myself there was sufficient mineralization there to constitute a valid discovery (PR 322-323). A few of the claims are singles. Most of them are made by pairs, by which I mean they have common end lines one running one way, and the other running the other (PR 313-316). In Yakobi 9 location notice I stated it ran 1500 feet southwest from the point of discovery which is not correct to the extent of some 30 or 40 feet. In Yakobi 1 location I didn't take into consideration the discovery was 20 feet southwest of the northeast center end post. In Yakobi 10 location notice I didn't

take into consideration that the discovery was 20 feet northeast of the southwest center end post. In Yakobi 11 location notice I stated discovery was 300 feet southwest of the northeast center end post, but that the claim ran 1500 northeast from discovery. In Yakobi 12 I said the claim ran 1500 feet northeast from discovery, although I said discovery was about 40 feet northeast of the southwest center end post (PR 301-305). I didn't ever go myself around the entire boundary of any of those claims (PR 324).

*Documentary evidence:* A map, *Appellee's Exhibit 1*, which was admitted after Appellee said he offered it in connection with Johnson's testimony (PR 166) and he would connect it up, Appellants having objected that Johnson's evidence was too remote (PR 165), which map Johnson said was prepared in the office (neither the place where nor draftsman's name being stated) from field notes made by Johnson, Stahl, and Kenniston in November and December, 1953 (PR 166), Stahl, who was not called as a witness, having measured the greatest share of the claims and having been helped by Breseman, who as well as Kenniston was not called as a witness, Johnson himself not having been on some of the claims (PR 200-201); the map is not complete (PR 188). I didn't place the descriptions on this map according to the location notices. We didn't amend the locations. We didn't follow the location notices when we were on the ground to make this map (PR 193-194). Norppa said the legends on Appellee's Exhibit 1 are correct; the red line on it showed his traverse around the claims and the side and end lines which he marked; the red circles, each

place where he put a location notice (PR 249-250), also the one witness corner he put in (PR 257). Appellee said that the Pelican and other claims that he hadn't been up to showed on Appellee's Exhibit 1 also the map, marked Exhibit A attached to and incorporated in his Amended Complaint (PR 58) (which map has now been detached from the Amended Complaint, but which should not be confused with Appellants' Exhibit A (PR 244)); also said map attached to his Amended Complaint showed all claims he claimed in this suit and showed the Takanis, Juneau and Pelican groups (PR 296-298); all center end posts he put in are marked on Appellee's Exhibit 1 with a green circle. Norppa put in the others. Appellee put up all location notices that Norppa didn't put in. In November Appellee put in all the corner and center end posts on Pelican 15, 16, 24, and 25. Norppa put in Pelican 28, 29, 30. Appellee put in the discovery posts and location notices on all of Takanis, Juneau, and Pelican groups (PR 298-301).

39 claim location notices of Appellee were admitted as *Appellee's Exhibit 2* (PR 288) over Appellants' objections (PR 287). (Three of these notices are reproduced in the Appendix, pp. 78-83.) Appellee said the posted notices are identical with those recorded (PR 285).

Appellee's Pelican 15, 16, 25, 26, 28, and 30 location notices were admitted as *Appellee's Exhibit 3* and Pelican 29 location notice, which Appellee said he had not signed, as *Appellee's Exhibit 4*, over Appellants' objection (PR 293), after Appellee's counsel announcing that those seven claims were involved with Appellants' 3 Beach claims, but not shown on Appellee's Exhibit 1; that other-

wise the Juneau, Takanis and Pelican groups were not involved (PR 289-291). Appellee said there is a large outcrop of norite about 150 feet across with a large rusty stain outside of that on the claim; we located those claims completely in the same manner; we ran the lines around to complete the staking of the claims; we put all the corner, end, and discovery posts on the claims. The discovery posts are immediately adjacent to the norite outcrops. He posted them (PR 291-293).

*Appellee's Exhibit 5* is Horn's deed reconveying the claims to Appellee (PR 325), who had previously conveyed them to Horn (PR 323).

During Appellee's Case in Chief, *Appellants' Exhibit A* was admitted (PR 244), U. S. Geological Chart, upon which Norppa said they laid out their plan of locating claims (PR 241-243). Appellee also said they used it in determining how to draw the lines of these claims, adopting some of the claim names, and drawing the mining claim locations thereon, which they laid out on the originals in the evenings (PR 277-281), having made a plan, not to take and run the boundaries around each claim by itself, but to run the end line of a number of claims and then the side lines of a number of claims to save going over the same lines 2 or 3 times (PR 277).

Appellee's attorney Ward said: Norppa didn't run all the lines. They used a rather peculiar method. They had planned before they went there. They apparently had these maps, which Mr. Robertson mentioned, where each one of them had certain lines they were going to run, and agreed with the Court's view that it was immaterial to show what lines Norppa ran (PR 214-215).



*Appellants' Exhibit B*, 27 lines (changed to 25 lines, PR 310) of Appellee's sworn answer to Appellants' Interrogatory 9, was admitted on his cross examination (PR 308).

*Appellants' Exhibit C*, a plat or sketch of Appellee's 102 claims filed by him with Recorder Richards of Sitka when he filed his location notices for recording, was admitted on his cross examination (PR 309). Appellee admitted that subsequently to when he and Norppa were on the claims in October and November, 1952, he had moved the Portia 5 discovery post and notice 70 feet, and that of Portia 6 for 60 feet (PR 309-310).

Norppa said in October, 1952, Appellee and he located 37 lode claims on the ground in 5 days. We worked from sunrise to sunset. I had difficulty walking home because it was already dark. It was raining. It was cloudy (PR 235-236). Appellee also said the October, 1952, weather was raining most of the time, occasionally a bit of sleet; very disagreeable weather (PR 316); November, still raining and sleeting, weather very bad (PR 323).

Appellee did not call as a witness: O'Donnell who was with Johnson in June, 1953 (PR 162); Stahl or Kenniston who were with Johnson in September, 1953 (PR 163); Stahl, Kenniston, or Breseman who were with Johnson in November and December, 1953 (PR 166; 200), although Johnson said he hadn't been over some of the claims and lines and that Stahl and Breseman went over some of the lines as a separate party (PR 201).

Presumably Norppa was not on Yakobi Island in September, November, or December, 1953, because neither he nor anyone testified to his presence then.

Appellee did not prove on his case in chief the extent of any conflict between his claims and Appellants' claims, other than Johnson said Appellants' claims in conflict are those north from the areas that aren't marked off into claims; I didn't mark on Appellee's Exhibit 1 any place to show the conflict (PR 177), or even mention them. Appellee's attorney Ward said Appellee's Pelican 15, 16, 25, 26, 28, 29, and 30 were involved with Appellants' 3 Beach claims (PR 290-291), nor did he in any manner describe of what the "Bohemia Basin Camp" consisted, which the Court held constituted a permanent monument when he found it referred to the cabin (Op., PR 105).

The Court's view apparently was that Appellants had the burden of showing the conflict as evidenced by its sustaining Appellee's objection to Appellants' effort to ascertain from Appellee's witness Johnson the extent of that conflict. Appellee's counsel then said he had asked nothing of Johnson in respect to Pape's corners or locations, but in due time Johnson would testify in great detail as to them (PR 179-180).

The Court sustained the objection on the ground the evidence was not proper cross examination. Notwithstanding the Court then said "Until they bring that claim out by the testimony of some witness, it would not be cross examination" (PR 180), thereby leading Appellants to believe that the Court agreed with their contention that Appellee had the burden to prove the extent of the conflict of their claims with Appellee's claims. Johnson never testified to Pape's corners until on rebuttal (PR 583).

Norppa was permitted out of turn to testify on rebuttal (PR 254-263), but he in no wise stated the extent of the conflict.

At the close of Appellee's case, Appellants moved (PR 326) for dismissal in accordance with Rule 41(b) FRCP, which the Court after argument denied (PR 340).

*Appellants' Case in Chief* (PR 343-573): Appellant Pape by deposition (PR 343-432), which was taken in Seattle by Appellee in September, 1953, without cross examination by Appellants (PR 432) said: I have known Vevelstad since 1931 (PR 345); in 1931 I worked about 2 months doing assessment work on Chichagof Nickel Company's mining claims in Bohemia Basin, Yakobi Island, which was the first time I was there (PR 346-349); I was next in Bohemia Basin on June 4, 1950, and was on Yakobi Island between 25 to 30 days at different times that summer (PR 349-350); I went to Bohemia Basin on September 24, 1950, and left October 2, 1950, around noon (PR 354-355); I went to Yakobi Island on June 13, 1952, with Harold Jones, Fred Jones, Earl Larson and Lee Besel, and stayed until July 1, 1952, Larson and Besel are both in the army so far as I know (PR 356-358); I filed with the Sitka Recorder affidavits (this affidavit is Appellants' Exhibit F, PR 434, printed in Appendix, p. 22) of doing assessment work for 1952 on mining claims in Bohemia Basin (PR 382); we repaired the roads and trail, repaired or put in four bridges, did trenching and put in open cuts, some of which are 100 feet long, one 20 feet, 10 to 15 feet wide in solid rock, and 3 to 10 feet deep; we worked about 10 hours a day 7 days a week (PR 382-396); I was on Yakobi Island on April

24 to 28, 1953, with Ed Engdahl (PR 397), and then (PR 399) from about May 3 or 4, with Bruce Cameron who left May 31 (PR 419); he and I did 15 days work on the trail (PR 501); we moved up to the upper camp May 19, 1953 (PR 419); the posts on all 4 Beach claims were in, No. 4 was a new location (PR 404); there was about a foot of snow, deeper in drifts (PR 421); Bruce and I did some blazing when we followed our lines from post to post (PR 421-422); both Hofstad boys came June 6; we had Breseman there (PR 426); Bill Walker was there (PR 404; 426); we did work on the cuts; blasted quite a bit in the open cuts, all through June; Hofstad boys, John Breseman, Vevelstad and I all worked on the open cuts; we put in 20 man hours (five men, 4 days) on the open cuts on the 4 Rita Claims; the open cuts are on the top of the west side rim of Bohemia Basin Rita 2 and 4 about in the middle of the claims, about 20 to 50 feet wide, about 50 feet in the vein, some 20, some 30 feet; they were picked out with pick, shovel, and crowbar (PR 427-430); all of us worked on open cuts on the downhill Hope claims, putting in about 70 man days of 8 or more hours per day, which work was of the same type I have described on the Rita claims and was in June prior to June 25th (PR 430-431).

Although convinced that Pape was a material witness (PR 135) the Court found that Pape's failure to appear at the trial was inexcusable and held that his deposition was inadmissible because plaintiff took it for discovery purposes only (PR 99), without, as Appellants submit, Appellee having objected, at least not properly, to its admission (see p. 12 *supra*).



Walter A. Richelsen (PR 437-463) said he was an experienced consulting mining engineer and geologist with extensive experience with mining claims and their location in Alaska (PR 438-439); a map, which he had prepared, was admitted, without objection, in evidence as Appellants' Exhibit K (PR 441). The outline in green ink is Appellee's location on the ground of his 102 claims mentioned in his complaint. Its beginning point is Latitude  $57^{\circ}57'33''$  North and Longitude  $136^{\circ}27'23''$  West, which was taken from Appellee's Amended Complaint (PR 439); the part in green follows their description. The red shade area is that held by the Appellant Aurora Nickel Company and was platted (PR 440) from the location notices which have been put in evidence (Appellants' Exhibits E, PR 433; I, PR 436; and J, PR 437). The map very distinctly shows the conflict between Appellee's and Appellants' claims (PR 440), and the important topographical features which were taken from Plate 2, U. S. Geological Survey Bulletin 931F (PR 441); prepared this map or sketch (PR 441) which was admitted without objection as Appellants' Exhibit L (PR 445) using in its preparation the data from Appellee's Answer to Appellants' Interrogatory 9. I platted only the discrepancy between Yakobi 1 and 2, and the discrepancy between Yakobi 11 and 12; it depicts the result if Yakobi 11 as the location notices say went actually 1500 feet southwest from discovery; it likewise depicts Yakobi 12, 1 and 2 (PR 442). It shows that between the end lines of Yakobi 11 and 12 would be some open public domain (PR 444). I was on Yakobi Island on August 5, 1942, when the Bureau of Mines and the U. S. Geological Survey, under the supervision of the

U. S. Bureau of Mines, were diamond drilling the Vevelstad property (PR 445) to investigate the results and ascertained at that time they had put down about 13 or 14 diamond drill holes and developed about 5,800,000 tons of nickelferous ore averaging about .36% nickel with about 23% copper. The ore deposition and deposits were largely confined to Appellants' claims. It is not disseminated over a vast area from what the findings of the U. S. Bureau of Mines and U. S. Geological Survey studied (PR 446). I was there two days in conference with Mr. Travers of the U. S. Bureau of Mines going over the drilling results and the data obtained by that drilling. I could not personally have gotten it in any other way unless I drilled the property (PR 447). My information was obtained from U. S. Geological Survey Bulletin 931-F, published in 1942 on page 120, of which the Court took judicial notice (PR 462-463). I got the information for outlining the claims in red on Appellants' Exhibit K from Vevelstad and the descriptions in the location notices and also from the bulletin covering the drilling that was used by the U. S. Bureau of Mines for claim data and based it all on this claim of Hope 4, which is right at the tunnel and where a definite location notice is posted. These claims were contiguous and in one group relative to Hope No. 4 (PR 447-456). That map is approximately correct in a general way because those claims are staked covering various ore outcrops and the tunnel lies on Hope 4 (PR 460).

Harold Jones (PR 463-472), a fisherman and carpenter, said: I went to Yakobi Island at Pape's request in June, 1952. My father Fred Jones, Pape, Larson and Besel went with me. We went to Yakobi Island at Bohemia Basin

and unloaded Besel and Larson and supplies. Pape took those two men to show them the property and the mines and where they were to do the work (PR 464). My father, Pape and I then went to the Mirror Harbor claims where we stayed 5 days, returning to the Yakobi Island property where Larson and Besel still were. We 5 men worked there 13 days clearing trails; building bridges that had washed out; rebuilding the cabin on the claim at the top of the mountain. Pape and Larson went up to the tunnel and worked up there. Two of us worked on the cabin and cleared an area (PR 465). I don't know whether there is a Mirror Island (PR 468). My father did trail work in addition to cooking (PR 469). I got \$50 a day for myself and boat; my father \$18 a day and \$2 for food out of that (PR 470).

Harold Hofstad (PR 475-497) said: Last June Pape hired me to do some work for him. On June 5, 1953, my brother and I arrived at Bohemia Basin Camp, and the next morning went up the cabin and found Pape. After having coffee my brother and I returned to the mouth of Bohemia Creek where we met O'Donnell and Johnson who were doing no work there. That same afternoon my brother and I went, after first going to Pelican, to another island, where we were gone 5 days, then returning to Yakobi Island (PR 474-476). We took Breseman to Bohemia Basin, where he went ashore when we returned to Yakobi Island on June 6 (PR 477). We did assessment work at Yakobi Island, mostly clearing out some open cuts in the neighborhood of the upper camp. Vevelstad, Arthur Hofstad, Pape, and I worked there (PR 480). Up to June 25th I was gone 3 days to Pelican. These

other 3 men and I worked together cleaning out these open cuts. We worked from a position in the lowlands between the tunnel and the upper camp of Bohemia Basin, and also considerable work was done to the left, and some was done on the rise above this—what you might say, there is a moderate rise there in the ground, and then there is a steep rise, and there was considerable work done up there in some open cuts that I never was on. Vevelstad, Pape, and Arthur Hofstad were working up there (PR 481-483). I did some on the left hand side of the creek, also on the right-hand side. I open-cut work and used picks, shovels, sledge hammers, wedges, etc. I didn't brush out trail or fix bridges or any trail work (PR 483). Dynamite was used, but I didn't use any (PR 484). While in Bohemia Basin I lived with Vevelstad, Pape, and my brother, who were there all the time (PR 484). While there I helped Vevelstad put up some amended locations. We examined Pape's notices, maybe 4, 5, or 6, which were in tin cans and readable (PR 486). Vevelstad placed the amended locations in new tin cans, which I carried but I don't know whether Pape's notices were put in the new cans or remained in the old cans. I helped Vevelstad set up, readjust, or repair monuments and blazes. Mostly stone monuments. There was very little material to blaze up in that region where Vevelstad and I worked (PR 487).

That upper country is very rugged, steep, canyons, no doubt subject to slides at a great many points. Vevelstad and I found along the Rim and inspected notices, which, although I didn't check the distances, were all placed very closely together. The locations had been filed



with compass directions for the claims were part parallel with the Rim. They were very short claims. In less than 2000 feet we encountered, I think, possibly 4 notices, perhaps 3, perhaps 5, but I think 4, which were double notices—2 notices spaced on different posts which were separated. I didn't measure the distance (PR 488-489). My recollection is they were either Norppa's or Appellee's. I believe that is on the Rita claims. I didn't see around there any other notices in Appellee's or Flynn's name. In my opinion in wandering and manoeuvring around to check Appellants' corner posts we should have encountered any other monuments. It is sufficiently open for that, but very broken up. I worked 9 or 10 hours, maybe more, a day (PR 490-491). A considerable amount of blasting was done. Pape set the blasts. I had rocks spraying around my ears when the dynamite was shot off. Vevelstad was swinging a pick and working along rolling loose and disintegrated material out of these open cuts the same as the rest of us while I was with him; doing the same work I was doing. I don't know whether he was present when any drilling was done because I wasn't there when the drilling was done. I stayed at a lower level (PR 495). Vevelstad made the notices out. I signed some of them as a witness. Presumably either Vevelstad or Pape put them in the cans. I was present when Vevelstad placed some of the notices. I don't know the exact number of claims on which those notices were put. I know I was on the Rita claims. The names of the others escape me (PR 496).

Arthur Hofstad (PR 497-513): My brother and I arrived at Yakobi Island June 5, 1953, and found the

watchman Bill Walker on the beach and the next morning we went to the upper basin and found Pape. We then went to Pelican and got some supplies and brought Breseman and Pape back to Bohemia Basin or to those claims on Yakobi Island. My brother and I then went to Sealevel returning to Yakobi Island in 4 or 5 days and remained there until June 26th or 27th doing assessment work. Breseman returned to Pelican about the time we returned to Yakobi Island from Sealevel. Vevelstad, Pape, my brother and I did open cut work using mining drills and hammers. Pape put in several blasts. I did the drilling. Pape set off the blasts (PR 497-499). Vevelstad and I went over on the 4 Rita claims on Takanis Mountain breaking out rock, using mining drills and we also did open cut work on the other side of the basin (PR 500). My brother, Pape and Vevelstad broke up rocks like the rest of us, using drills, hammers, and picks. I didn't do any trail work. We worked every day, I believe Sundays too (PR 501). I only remember seeing two notices where the Rita claims are. They didn't look 1500 feet apart to me. I helped Vevelstad put up some amended location certificates on the Rita claims. I was present when they were posted in a can where Pape had had locations which were still there and which were left with the amended locations in the cans (PR 502). I worked on both the Hope and Rita claims. I believe I put three days' work in on the Rita claims and that my brother went with Vevelstad on the fourth day and I worked on the Hope claims for the other eight days. I saw them go up there but I couldn't see them doing work. It is too far for that. I repaired a few

monuments. I don't know whether the rock or snow slid them down the hill or what happened to them. I made or renewed two monuments on Appellants' claims on the left hand side of Bohemia Basin. I saw Vevelstad doing work like we did, using picks and mining drills (PR 504). I guess Breseman was there four days. Vevelstad was on Yakobi Island when my brother and I came back from Mirror Harbor. We drilled 30 or 35 holes. I couldn't tell you how many I drilled. We used single jackhammers and had mining drills about  $1\frac{1}{2}$  feet long. We took turns drilling. We had 3 or 4 drills and we found some more at Mirror Harbor. I don't know how many boxes of dynamite we had. Pape put 2 or 3 sticks in each blast. I am sure he set off 12 or 14 (PR 506-509). We broke up rocks. Sometimes we would put a wedge in and rock would break out. We didn't have to use blasts on them. Some of it the water leaks down through and broke out, so the rock come out easily. We didn't need dynamite. In some places we didn't need much drilling. I helped Vevelstad amend the Rita claim locations. I helped put some corner posts and rock monuments on the Hope claims. There is a big bunch of them. I did some blazing on the left hand side of Bohemia Basin (PR 509-510). I didn't find on the Rita claims where they put 5 or 6 witness notices all at one spot. Vevelstad wrote out quite a few notices and put them up at the top of the valley where the Rita claims are. I don't remember anything about the Doris claims. The purpose of the drilling was to do assessment work, partly so we could sample these pits. We didn't drill any tunnels. I didn't run any Svere claims lines. I can't say where they are. By our work we ex-

posed fresh surfaces of nickel ore. We re-exposed the same surfaces exposed in the bottom of these pits before they sloughed in (PR 509-513).

Edward Engdahl (PR 513-521): From Pelican to the mouth of Bohemia Creek, Yakobi Island, is about 8 miles (PR 514). I went with Pape early in June, 1950, at his request, to Yakobi Island, and the next day went up to the upper camp in Bohemia Basin and stayed 4 or 5 days; going up the lines and locating old mining locations, re-locating the old stakes; we blazed lines; we put in stone monuments on both sides of the tunnel, on both mountains; we didn't restake any claims then; where we could find the corner stakes we made good blazes on them or put new ones, and did the same thing about stone monuments on top of the mountains (PR 514-518); Pape and I did trail work, both going and coming; we put one new foot-bridge in and repaired others, and got rid of the jam in the creek. I next saw Pape either the latter part of September or first part of October. He was going back to the basin and asked me to go along, but I couldn't. About April 25, 1953, I helped Pape stake a new claim down on the beach at the lower camp. I put in stakes approximately between 4 and 5 feet and between  $3\frac{1}{2}$  and 4 inches; blazed on four sides; putting in four corners. I believe the discovery post was put in (PR 518-520).

Appellant Vevelstad (PR 521-573) said: I have been acquainted with Yakobi Island since 1917, locating the ore bodies thereon in 1920 and returning every year until 1926. I built the buildings on the island except the Bureau of Mines built what is called the assay office at the base camp on the beach, which camp I put up



and whose local name is Bohemia Basin Camp (PR 522-524). I have known Pape since 1931. He did the assessment work in 1952 (PR 524-525). I arrived on Yakobi Island June 11, 1953, about noon and went to the upper camp and first checked and found all of Pape's location notices and found Appellee's Yakobi 1, 2, 3 and 4 location notices which are all on that side, and later found eight of Appellee's location notices on Takanis Mountain all bunched together in a string 1400 feet long, making each claim about 200 feet long. The notices or monuments were staggered, that is he put one here and one over there so he would not get parallel end or parallel side lines. Each claim is by itself. There were no side lines. The 4 Yakobi notices were also staggered locations. I found them a little southwest of the tunnel about 60 or 80 feet southwest from Pape's locations whose notices were still there on the 12 Hope, 4 Rita, and 1 Svere claims. I checked all of them. They were in cans placed in rock monuments. Those claims are above the timber line, except for a little timber on Hope 7, 8, 9, 10, 11 and 12, but it is awful steep there (PR 525-528). I located over 1000 claims this last ten years. In that country if there was no heavy rain or sleet, two men could locate in accordance with the statute 4 claims a day. It is the toughest country in the world. Those mountains go up 2400 feet and drop right down. About 1/3 of that country is accessible. Takanis Mountain is the worst mountain in this country (PR 528-529). On arrival on Yakobi Island June 11 I found Pape and Bill Walker there, who was the watchman at the beach where we keep our supplies and stores (PR 529). I remained there from June 11



until the evening of June 25th when the two Hofstad boys, Pape and I, also Walker, left. We had finished the assessment work, having spent over \$3800. The Hofstad boys, Pape and I worked every day from June 13 to about 5:00 o'clock June 25th. The Bureau of Mines never did any work on pits. We cleaned them out to get fresh surfaces to take samples. In that kind of ore if the surfaces are exposed for about one year the sulphur and nickel leaches out and runs away with the rainwater into the soil (PR 529 to 532). In doing assessment work we used hammers, bars and picks. When the surface is exposed to the atmosphere, rain, water, and oxygen, you can pick quite a bit off with a pick or crowbar. We did some drilling. Pape did some blasting, all of it (PR 534). I am familiar with Appellants' 27 claims. I amended the locations of 12 Hope, 2 Doris, 4 Rita and I think 1 Svere claim. The Rita claims are located in from the rim running north and south of Takanis Mountain and are tied into a little lake and a trail coming up the valley. Geological Survey definitely established the latitude and longitude for that lake (PR 535). Bohemia Basin is not a real basin. It is a valley about 1/2 mile wide and about 8 miles long. It cuts the island in two. The light red on Appellants' Exhibit K exactly describes the location of Appellants' 27 claims on the ground. The Mayflower 2 to 9 location notices, part of Appellee's Exhibit 2, are not the same as the notices posted on the ground which state that the claims run northerly and southerly. Those claims are actually on the west slope of the mountain. I found 8 location notices in 8 different monuments, but they are about 20 feet apart and they are staggered

without adjoining end or side lines because there is only one string. That map is not the same as it is on the ground. If each claim is 1500 feet that is 9000 feet but those particular claims only cover 1400 feet in perimeter which I measured with heavy trolling line and ascertained those 8 claims actually covered 1400 feet. Two on the end go overboard into a canyon 400 feet deep and are located on the precipice. They have six separate claims on the bluff without joined end lines, leaving about 10 or 15 feet between end lines or an unlocated fraction. Six claims cover 1400 feet. The location notices say 1500 feet northerly or 1500 feet southerly. This is northwest and southeast. The location notices describes them as being located 3000 feet west of the Bohemia Basin Camp on the north slope of the Bohemia Basin. The north slope of the basin or valley runs north and south and is down at Lisianski Inlet. Appellee's claims are on the west slope. Appellants' Exhibit L correctly illustrates the staggered location without parallel or adjoining end or side lines. None of these Appellee's claims have corner or end posts, just a discovery post (PR 535-541). We put in at least 126 days doing assessment work. I am only personally acquainted with the time put in since I came there on June 11th. I made amended locations in June of those claims covered by the amended certificates that I recorded, marked Appellants' Exhibit J. Pape's locations are in the same cans that the amended locations are in. They are legible (PR 540-543). I base my claim of damages for \$5,000,000 actual loss because Appellee jumped those properties whereas the National Production Authority of the United States was going to finance the

money for the plants, and I would have put in a plant to mine the ore which would have been concentrated and shipped south in concentrates. I had people then who were ready to go ahead under that National Certificate of Authority and still are. Appellee clouded the title. Nobody will go in with a clouded title. \$5,000,000 is only 1/2 of what you would earn annually if you had a plant of that size. A plant operating would earn annually \$60,000,000 of which my share alone would be about \$8,000,000 per year on the royalties alone, besides 25% of the profits. I had a deal on then with legitimate responsible people, one of the biggest engineering firms in the United States. My people quit just as the Howe Sound Company did in 1940 when Banfield and Faulkner and a Chicago lawyer Fisher sued the Howe Sound Mining Company. I had trouble in 1940 with Hans Lundberg and John R. Stirrett, mentioned in Flynn's answer to Interrogatory 35. I base \$15,000,000 exemplary damages because under the Anti-Trust Law you can ask for punitive damages three times the actual damages (PR 543-550). I was on Yakobi Island September 30, 1950, about 6 a.m., and went up and met Pape in the cabin and came down by 10 o'clock (PR 557). Pape and I didn't leave the island that morning on Hildre's boat or go to Mirror Harbor. Pape stayed, so did the other fellow (PR 558). I don't know anything about Pete Brown, named in Pape's deposition, or that he is associated with Pape. I had nothing to do with him (PR 559-560). The position in respect to the Hope claims of the Svere claims on that are correct so far as I know. I

know the other claims are exactly the way they are (PR 560). I brought Pape from Chicago in May and June, 1931, and Pape went over all those claims and knew all about them and the discoveries on them in 1931 and had that knowledge when he made the locations in October, 1950 (PR 568), and in the amended locations I used the same monuments and the same discoveries he had at the same place and found his discoveries actually on the ground (PR 564). The difference in time required to locate six claims on the beach at Sealevel and any four claims in Bohemia Basin is at sea level they are along the shore. You can pull along with a skiff. You don't have to climb any hills. On Yakobi Island you must climb from one valley to another across mountains that are in most cases impossible to climb. Going up to the Rita claims is only one possible trail unless you go way off to the side (PR 568-569).

*Documentary Evidence:* *Appellants' Exhibit A*, Photographic Copy of U.S.G.S. Bulletin 931-F, Plate 20, was admitted (PR 244) in cross-examination of Norppa. It should not be confused with the map, marked Exhibit A, attached to and incorporated in Appellee's Amended Complaint (PR 58).

*Appellants' Exhibit B*, first 25 lines of Appellee's answer to Appellants' Interrogatory 9, was admitted (PR 308) on cross-examination of Appellee.

*Appellants' Exhibit C*, Recorder Richards' tracing of the plat filed with him by Appellee when the latter filed for record his 102 location notices, was admitted (PR 309) upon Appellee's cross-examination.



*Appellants' Exhibit D*, Pape's deposition (PR 343-432), admitted in evidence (PR 342), but subsequently held inadmissible (PR 99), although the Court found Pape to be a material witness (PR 135).

*Appellants' Exhibit E*, Pape original location notices of Rita 1 through 4, Hope 1 through 12 (Hope 3 is not actually named on notice), and Svere, was admitted (PR 433) at close of Pape's deposition. Copies in Appendix, pp. 26-59.

*Appellants' Exhibit F*, Pape's original verified proof of labor, dated July 8, 1952, for assessment year ending noon July 1, 1952, for Hope 1 through 12, Rita 1 through 4, and Svere claims, was admitted (PR 434) at close of Pape's deposition. Copy in Appendix, p. 22.

*Appellants' Exhibit G*, Pape's deed to Aurora Nickel Company of Hope 1 through 12, Rita 1 through 4, and Svere lode mining claims, dated October 27, 1950, was admitted (PR 434-435) at close of Pape's deposition.

*Appellants' Exhibit H*, Pape's original verified proof of labor, dated July 3, 1953, for assessment year ending July 1, 1953, for Hope 1 through 12, Rita 1 through 4, and Svere lode mining claims, was admitted (PR 435) at close of Pape's deposition. Copy in Appendix, p. 24.

*Appellants' Exhibit I*, Aurora Nickel Company's original certificates dated July 1, 1952, for Doris 1 through 4, Takanis 1, Svere 2, Beach 2 and 3, was admitted (PR 435-436) at close of Pape's deposition. Copies in Appendix, pp. 60-77.

*Appellants' Exhibit J*, Aurora Nickel Company's original amended location certificates Rita 1 through 4, Doris



1 and 2, Hope 1 through 12, Svere and Svere 2, and original location certificate Svere 3, all dated in June, 1953, was admitted (PR 436) at the close of Pape's deposition.

*Appellants' Exhibit K*, map showing Appellants' claims superimposed over Appellee's claims, was admitted without objection (PR 441) on Appellants' witness Richelson's direct.

*Appellants' Exhibit L*, illustrative map of staggered staking of Appellee's Yakobi 1 and 2 and Yakobi 11 and 12, was admitted without objection (PR 445) on Appellants' witness Richelson's direct.

*Appellants' Exhibit M*, Appellee's answer to Interrogatory 15, was admitted without objection (PR 472) at close of Jones' testimony.

*Appellants' Exhibit N*, small picture of cabin in Bohemia Basin, was admitted without objection (PR 578) at close of Goodwin's rebuttal cross.

*Appellants' Exhibit O*, snapshot of tunnel mouth in Bohemia Basin, was admitted without objection (PR 646) upon Johnson's rebuttal cross.

The Court took judicial notice of U.S. Geological Survey Bulletin 931-F, published in 1942 (PR 463).

*Appellee's Rebuttal*, (PR 574-696): Goodwin (PR 574-578) an airplane operator and pilot, said I am acquainted with natural monuments and permanent improvements on Yakobi Island; the camp in Bohemia Basin at the beach is usually referred to as the beach or lower camp; the only other camp is further up in the basin and is a very prominent land mark known by the name of the Bohemia

Basin or upper camp (PR 574-575); I have flown over it many times; I never landed on Takanis or Lynn Lake; I flew within 20 feet of the camp in the basin; Pros Ganty told me it was called the Bohemia Basin Camp; I recognize the picture, Appellants' exhibit N, which was admitted in evidence without objection (PR 578) and flew within 20 feet of that cabin (PR 575-578).

Hildre (PR 592-606), who was called out of turn, said Velvestad employed him and his boat in September, 1950, to make a trip, of which I didn't keep a log; we left Juneau September 29 for South Lisianski, what they call the Bohemia Camp, at the outlet of Bohemia Creek arriving there 6 a.m., September 30; at 9 a.m., Pape came aboard the boat and we left for Sealevel where the whole gang went ashore and Velvestad put up some notices which I didn't examine. Pape was with us. Then we went back to Bohemia Basin. On October 1 we left Bohemia Basin and went to Sealevel. Pape was with us. We then went to Pelican and to Juneau, where we arrived October 2, where Pape got off (PR 592-600). We picked Pape up October 1 about 9 or 10 o'clock a.m. I have no record of it (PR 600-601). I can't remember whether Pape went ashore with Velvestad and my deckhand at the point north of Takanis Bay whence we returned to Bohemia Creek the evening of October 1 and where Velvestad went ashore. I imagine Pape did. We left Bohemia Creek about 10 or 11 o'clock October 2 returning to Juneau (PR 604-606).

Johnson recalled (PR 578-592; also 607-652), identified Appellee's Exhibit 6, which was admitted, and said correctly showed the corners and rock mounds of Svere,

Rita 1 through 4, and a certain number of Hope claims, which lines, monuments and posts he surveyed in September, 1953 (PR 578-580); he was not over the entire east line of Hope and Svere claims in May, 1953 (PR 588); there is nothing found in May that is on that map, not a thing, except one post now marked Hope 1, 2, 3, 4 (PR 590); the mounds he found could have been made in 1950 (PR 591); he found some new blaze lines alongside older blaze lines, freshly blazed trees mingled amongst an older set of blazes that had been made the fall before (PR 608). These older blazes were on the Yakobi claims between the Yakobi posts and alongside until they reached Yakobi 4 center end post; he found a freshly marked, squared tree, a joint line, Hope 1 and 3 (PR 609); that map shows all monuments, posts, squared trees, and blazes other than Appellee's, which could have been made between 1950 and 1953 (PR 612); Exhibit 6 correctly shows all Hope, Rita and Doris claim monuments, corner, and center end posts we found on the ground (PR 613). He later found other posts not shown on Exhibit 6 along center end between Hope 7, 8, 9, 10, 11, 12. The map doesn't show the Pape claim blazes where they continue up towards their discovery or center end of 6, 7 and 8. That can hardly be blazed in there. That line is also blazed where I show 3 new posts (PR 614-615). That plat shows all of Pape's corners or monuments. He found Pape's location notices in June, 1953, in cans either in rock mounds or nailed to a tree. A squared tree was at the center post and discovery for Hope 9 and 10, a discovery post with can on each side. He read the one for Hope 10 the last day in November,

1953. At the top of it Pape had written, "I, William L. Pape, October 1, 1950" and then the bearing, and distance, and size of his claims, and at the bottom "This claim was discovered October 1, 1953." (PR 616-617). I have a photographic film of it. The transparent map, which was admitted Appellee's Exhibit 7, shows the Hope, Svere, and Rita claims. It and Appellee's Exhibit 1 are made on same scale, from same survey with same coordinates and various points correlated (PR 618-619). In May and June I checked parts only of Yakobi 1, 2, 3, 4, and 5, Betty 7 and 8, just partial on one line there; I looked at several corners of the Pelican claims, and saw parts of Portia 4 and 5. I didn't check all of Appellee's locations in September, 1953, and didn't find any new stakes, posts, monuments, blazes that had been put on any of Appellee's claims (PR 626-627). I didn't find in November or December, 1953, the post I have green circled on Appellee's Exhibit 1 (PR 632). Appellee's Exhibit 6 only shows the relationship of the corners and those lines. You don't have to draw in the lines. You can connect them up (PR 638-639). I don't recall any such thing as the upper line. These are located on a hill above the tunnel. It doesn't show the contours on the map (PR 642-643). Appellee wasn't with me all the time in May, 1953 (PR 643-644). Appellants' Exhibit O, a picture, was admitted without objection (PR 646). Johnson said it looked like the Yakobi Island country (PR 645). I was on the Mayflower in May, 1953. Appellee's Exhibit 8, a kodachrome slide, was admitted (PR 650-651). I took the slide of the notice upon center end discovery post Hope 10, then finding in the same can Aurora Nickel Company's amended certificate location (PR 652).



Harrigan (PR 652-677), a surveyor, with Appellee arrived at Bohemia Basin May 14, 1953, meeting at the beach Pape who was very cooperative, so we started toward the upper basin on what is known as the upper trail, intersecting about 800 feet from the beach camp a line of blazes, and immediately adjacent to the trail was a squared post marked Pelican 24, 25, 28, and 29, and about 500 feet farther up the trail Pape said: "Now you are coming to the back line of my beach claims" and about 200 feet further up I intersected 3 blazes (PR 652-654). The night before in plotting Pape's Hope 6 through 12 locations I approximately established they laid somewhere beyond Bohemia Creek's forks or big elbow or bend (PR 656). Over Appellants' several objections (PR 655; 660; 661; 666; 667; 668), Harrigan testified almost entirely in narrative form, and to a report or affidavit to Appellee's counsel (PR 667-669), which was not in the record. Harrigan said he gave Appellee the description of Appellee's claims used in Appellee's Complaint and Amended Complaint taken from Appellants' Exhibit A (PR 669-670); the only time he was on Yakobi Island was 7:20 am to 4:40 pm May 14, 1953 (PR 672-673); in making his statements he knew Pape was unavailable to contradict him (PR 673); snow was no problem maybe for an area 400 or 500 feet either side, especially on trail's lower side; spotted; considerable snow in higher elevations; around the cabin 12 or 14 inches (PR 674-675).

Klein (PR 677-696) said he was on Yakobi Island November 25 to 28, 1953, to investigate age of certain marks on trees and covered all this line from Sverre 3, Sverre 2, and Sverre claims, Hope 5, 3, and 1, Doris 1 and 2,



and those 3 corners of the Sverre claim, all whereof were live trees except the common corner of Hope 1, Doris 1 and 2 (PR 679). No blazes or cutting into any tree indicated any blazes of an age of less than 13 or more than 3 years old. I didn't see any. None of Pape's blazes could have been made in 1950 and reblazed in 1953 (PR 683-684); all the trail work between the beach at Bohemia Creek's mouth and the cabin during 1951, 1952, and 1953, he appraised at 6 man-days 8 hours daily (PR 686-689); "It is all my opinion" (PR 695).

*Documentary evidence:* Appellee's Exhibits 6 (PR 680), 7 (PR 619) and 8 (PR 651-652) and Appellants' Exhibit O (PR 646) were admitted during Appellee's rebuttal.

*Appellants' Surrebuttal:* Vevelstad (PR 696-699) said Appellants' Exhibit N was taken on level ground, shows the big cabin, Baldy Mountain, and takes in most of Hope 1, 2, 3, 4, 5, 6 claims. The trees are probably from 20 to 40, 50 feet high. In June, 1953, they were of that height (PR 696-697). I took the picture, Appellants' Exhibit O of the entrance of the tunnel into the mountains. It is the place Johnson was talking about when he said it was easy to see through the country, see monuments, blazes, or anything of that kind. In Seattle last spring Harrigan told me he found 5 feet of snow around the cabin. He called at my hotel (PR 698-699).

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### QUESTIONS PRESENTED.

The questions presented by Appellants' 18 Points (PR 717-720), are whether the Court abused its discretion in (1-PR 717), requiring Appellants to go to trial in Pape's

absence (PR 88; 135-159); (2-PR 717) giving credence to Ward's affidavit (PR 78-81; 82-83; 86-87; 87-88; 93-95; 158); (3-PR 718) disregarding Appellants' request to adduce Pape's evidence before decision was rendered (PR 95); and (4-PR 718) in requiring the Appellants, particularly Vevelstad and Aurora Nickel Company (PR 153) to go to trial in Pape's absence and (5-PR 718) in holding Pape's deposition was inadmissible (PR 99); the Court erred (6-PR 718) in not considering Richelson's testimony which was based upon U.S. Bureau of Mines data (PR 447; 462) whereof the Court later took judicial notice (PR 463), but said Appellants' Exhibit K was of little value although offered as illustrative (PR 461); (7-PR 718) in holding that Bohemia Basin Camp, to which most of Appellee's location notices were tied, constituted a natural or permanent monument and referred to the cabin (PR 105) although no evidence was adduced to that effect; in fact, several witnesses, including Appellee's witness Hildre referred to the camp as being at the mouth of Bohemia Creek (PR 595) as did Vevelstad (PR 522-524); and in denying Appellants' Motion for a New Trial (PR 107-109) and in disregarding (8-PR 718) Pape's affidavit (PR 109-112) which refuted Ward's affidavit (PR 78-81) as well as (PR 111) Hildre's testimony that Pape had left Yakobi Island on October 1, 1950 (PR 599), not October 2 which was the departure date admitted by Hildre on cross (PR 605), and (9-PR 718) Peter Brown's affidavit (PR 113) that Pape and he left Bohemia Basin on the forenoon of October 2, 1950, and Breseman's affidavit (PR 116-118) that with Stahl, who as well as Breseman was not called as a witness by Appellee, in November and December,

1953, he had checked and found Appellants' Hope claim boundaries blazed and their corner and discovery posts in place and visible and that Stahl said he had never seen claims better marked than Pape's claims, Stahl admittedly having measured the greatest share of the claims and with Breseman having gone over some of the lines as a separate party (PR 201); and (10-PR 719) in disregarding Appellants' affirmative plea for relief in and proof of their Compulsory Counterclaim (PR 73-74), which was refuted by neither reply nor evidence; and (11-PR 719) in holding Appellee's 49 claims (PR 119-121) were located and certificates of location thereof recorded as required by United States and Alaskan mining laws; and (12-PR 719) in rejecting Appellants' affidavits of assessment work, Exhibit F and H (Appendix, pp. 22-25) as prima facie evidence of doing the work and making the improvements therein stated; and (13-PR 719) in disregarding Appellee's failure by reply brief to refute the law or the facts as stated in Appellants' trial brief (PR 108); and (14-PR 719) in not requiring Appellee to sustain the burden of proof of his claim for relief and in placing the burden upon Appellants (PR 108); and (15-PR 719) in not requiring Appellee to rely upon the strength of his own title (PR 108); and (16-PR 720) in not requiring Appellee to prove the definite extent, if any, of the conflict between his claims and Appellants' claims; and (17-PR 720) in not regarding Appellee's self admitted, volunteered disqualification to locate mining claims in Alaska because he is a Canadian citizen (PR 265); and (18-PR 720) in entering its judgment (PR 119-122) contrary to law and evidence (PR 109).

**ARGUMENT.****ABUSE OF DISCRETION BY THE TRIAL COURT.**

Questions and Points 1, 2, 3, and 4 (PR 717-718).

Appellants respectfully urge that the learned trial Court exercised its discretion arbitrarily and capriciously in forcing them to trial, unless they paid unspecified costs of \$2750 (PR 154) or \$2700 (PR 88), in the itemization whereof the Court was not interested (PR 156), in the absence of Appellant Pape, who was more than 100 miles distant from the place of trial at the time thereof (Military Sea Transportation Service Letter, PR 87-88; Vevelstad affidavit, PR 82-83), not at Appellants Vevelstad's or Aurora Nickel Company's procurement (PR 82-83; 83-88), who urged they were entitled to have the trial postponed (PR 137; 153).

The Court seemingly thought those two Appellants should have subpoenaed Pape (PR 153), which they could not do under Rule 45(e)(1) FRCP because Pape was in Seattle (PR 79; 82-83; 87-88), which is more than 100 miles from Juneau, the place of trial, and outside of Alaska, and they did not know Pape would absent himself from the trial (PR 82-83).

The Court held Pape to be a material witness (PR 135-136), but refused Appellants even a continuance until the next day and insisted upon going to trial the same day (PR 157), clearly doing so upon its credence of Ward's affidavit (PR 78-81), Appellee's only verified statement opposing the continuance. Ward therein admitted he had talked with Pape on several occasions between July 20 and August 31, 1953, about settlement (PR 78), [during which period of time Pape was represented by



counsel who was unacquainted with the occurrence of those talks (PR 153-154)], and knew that Appellants could not then obtain Pape's affidavit (PR 85), the absence whereof the Court criticized (PR 153), and ignored entirely Appellants' Motion for Postponement (PR 76-78), Velvelstad's and Robertson's affidavits and Military Sea Transportation Service's letter (PR 82-88) and Appellants' Objections in Court on October 2, 1953 (PR 137; 149) and letters of October 7, 1953, November 12 and 28, 1953, and December 7, 1953, to either the Court or Appellee's counsel (Appendix, pp. 17-21, also, *supra*, pp. 16, 17, 19), and the Court's failure on December 1, 1953, when it informed Appellee's counsel that it would deny Appellants' Motion for Postponement because Robertson had verified it on information and belief, to likewise so inform Appellants' counsel, which the trial Court did not controvert (PR 137; 149), which knowledge so received from Appellee's counsel misled Appellants into thinking that their Motion for Postponement would be granted upon their supporting as far as possible their said Motion by actual knowledge which they sought to do through Velvelstad's and Robertson's supplemental affidavits and the Military Sea Transportation Service's original letter (PR 82-88).

The Court's attention was directed to these abuses of discretion by Appellants' Motion for New Trial (PR 107) supported by Brown's affidavit (PR 113-114), Breseman's (PR 114-115; also 116-118) and Pape's (PR 109-112) denying Ward's (PR 78-81) and stating he, Pape, desired to be a witness at the trial in order to protect his interests, that Ward had made offers of settlement and employment to him in a new company (PR 110-111) and



that he would have lost his government job had he not made the trip on the Marine Lynx on November 26, 1953, to Korea (PR 109) and that he had requested his counsel to apply for a continuance until after January 1, 1954, so he could attend the trial, and that Ward was anxious to hold the trial without Pape's presence so the latter could not testify (PR 112). While the Court seemingly, in finding that Pape had wilfully absented himself from the trial (PR 152), forced Appellants to immediate trial (PR 88; 157), because Pape personally had made no affidavit (PR 153) in support of Appellants' Motion for Postponement (PR 76-78), it disregarded in denying (PR 118) Appellants' Motion for New Trial (PR 107-109) not only Pape's affidavit (PR 109-112) but also the unrefuted proof (PR 93-97) called to the Court's attention in Appellants' brief that Ward had deceived the Court in regard to his status as a practicing attorney in Seattle, Washington.

Appellants submit that a court of equity should have heeded that deceit and that, had the case been one for a jury, the Court would have been bound to instruct the jury, i.e.:

" . . . They are, however, to be instructed by the Court on all proper occasions:

"First . . .

"Second . . .

"Third: That a witness wilfully false in one part of his testimony may be distrusted in others."

Sec. 58-5-1, ACLA 1949.

Furthermore, Ward had admittedly had several conversations with Pape about a settlement out of Court

(PR 78), and did not deny they were had out of Court and in the absence of Pape's counsel (PR 153-154).

Ward's misconduct, which was disclosed by his own affidavit (PR 78-81) to the Court, was unethical:

"A lawyer should not in any way communicate upon the subject of a controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel . . ."

Canon 9, American Bar Association Canons of Professional Ethics, 1947, p. 8.

and should have aggravated in the Court's mind in its exercise of sound discretion that deceit.

Judicial credence of Ward's affidavit (PR 78-81) clearly prejudiced Appellants.

The Court being convinced that Pape was a material witness from reading the affidavits, motions and "so on" (PR 135-136), which apparently were Appellants' verified Motion for Postponement (PR 76-78) and Vevelstad's and Robertson's affidavits (PR 82-88) and Robertson's four letters to either the Court or Appellee's counsel (Appendix, pp. 17-21), [because the Court so found prior to the oral argument on December 15, 1953 (PR 135-159)], even Appellee admitted Pape was an important witness (PR 147), it scarcely seems necessary to point out to what material evidence he testified in his deposition, Exhibit D (PR 343-431), other than he was in Bohemia Basin from September 24 to October 2, 1950 (PR 354-355; 373-376) and did the assessment work in 1952 (PR 382) and in 1953 (PR 427-431), [which would have sup-

ported his location notices and certificates of location, Exhibits E and I (Appendix, pp. 26-77) and his proofs of labor, Exhibits F and H (Appendix, pp. 22-25) and contradicted Ward's affidavit that Appellee had overwhelming proof that Pape did not locate any mining claims in Bohemia Basin in October, 1950, or prior to Appellee's locations (PR 80)]. Pape's affidavit (PR 109-112), which the Court ignored in denying (PR 118) Appellants' Motion for New Trial (PR 107-109), also clearly shows the materiality and importance of his evidence.

Appellants respectfully submit the trial Court arbitrarily and capriciously exercised its discretion in rejecting Appellants' request to reserve its decision until Pape's evidence could be adduced (PR 95) and that as a court of equity it had inherent power to do so. Moreover, Rule 52, FRCP (Appendix, pp. 16-17), undoubtedly empowered it to do so.

*Hernberg v. Tipton*, CCA, Ill. 1943, 133 F2d 67, 69.

Rule 53(e)(2) in regard to Masters provides: "In non jury actions . . . The Court after hearing . . . may receive further evidence. . . ."

If a court may receive further evidence after a master's report, surely a court of equity may do so after conducting its own trial or hearing.

The trial Court recognized this power in

*George v. Lyons*, 110 F.Supp. 711, 713, 14 Alaska 241, 244.

Without reiteration of the record's clarity (pp. 14-19 supra) that Appellants were sincerely and totally surprised at being forced to trial in Pape's absence (PR 88;

157), they submit they were prejudiced thereby because they relied upon him to prove that he made his locations in October, 1950 (PR 111), and the extent and nature of the 1952 assessment work (PR 355-358; 382-396) and to corroborate his proofs of labor, Exhibits F and H (Appendix pp. 22-25), and to refute (PR 109-113) Ward's prejudicial statements (PR 78-81) and such of them as might be put in evidence.

Appellants respectfully submit that the trial Court's abuse of discretion was also arbitrary and capricious in giving credence to Ward's affidavit (PR 78-81) in denying their Motion for Continuance (PR 76-78), and in denying their request for reservation of decision until Pape's evidence could be adduced (PR 95) and in failing to inform Appellants that it had informed Appellee on December 1, 1953, that it would deny Appellants' Motion for Continuance (PR 137) and leaving Appellants to learn thereof on December 8, 1953, from Appellee's counsel (PR 137), and in disregarding Appellants' showing that Pape was more than 100 miles from Juneau, the place of trial, and, certainly so far as Vevelstad and Aurora Nickel Company were concerned, they had not procured his absence (PR 82-88), and in rejecting Pape's deposition on the ground it was taken by Appellee for discovery purposes only (PR 99; also, see: Question 2, Point 5, *infra*, p. 57).

Arbitrary and capricious abuse of discretion is error.

3 *Am. Jur.*, p. 524-5, Sec. 959.

*Adcock v. Adcock*, 91 NE2d 99.



**PAPE'S DEPOSITION WAS ADMISSIBLE  
UPON APPELLANTS' OFFER.**

Question 2: Point 5 (PR 718).

Appellants offered in evidence (PR 340) Pape's deposition taken by Appellee in Seattle in September, 1953 (PR 343-432), which the Court tentatively admitted (PR 342-343), but later rejected on the ground it was taken by Appellee "for discovery purposes only" (PR 99). Appellee, in resisting a continuance, suggested Appellants' use of Pape's deposition (PR 147), and, Appellants contend, did not object, at least not properly, to its admission (PR 340-342).

It was clearly admissible under Rule 26(d)(3)(2) FRPC, i.e.:

"(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: . . . 2, that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was obtained by the party offering the deposition . . ."

The Court made no finding other than Pape's absence was inexcusable (PR 99). Pape was more than 100 miles distant from Juneau, the place of trial, and outside the United States, nor had Appellants Vevelstad and Aurora Nickel Company procured his absence (PR 82-88). They could not subpoena him under Rule 45(e)(1), FRCP, i.e.:

" . . . A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the district, or at any place without the district that is within 100 miles of the place of hearing or trial specified in the subpoena; . . ."



The Court said Pape was a material witness (PR 135-136). It did not say his deposition did not adduce material evidence (PR 99); in fact, it was material, *inter alia*: He worked on Chichagof Nickel Company claims in Bohemia Basin about 3 months in 1931 (PR 346-348), which showed his familiarity with ground and discoveries. Vevelstad said the Chichagof Nickel Company first held these claims from 1925 to 1934 (PR 551). Pape said he went to the upper camp (in Bohemia Basin) on September 25, 1950 (PR 375), returning to the Beach Camp noon October 2, 1950 (PR 376; 354-355), refuting Hildre's first statement that Pape left Bohemia Basin October 1, 1950 (PR 599) and agreeing with Hildre's second statement Pape left Bohemia Basin October 2, 1950 (PR 605). Pape's location notices, Exhibit E (Appendix, pp. 26-59) bear date October 1, 1950. Pape testified to the extent of the 1952 assessment work, including work on trails, which he did (PR 356-358; 381-396) and for 1953 (PR 396-431), refuting Klein's opinion as to the small extent of trail work (PR 686); also (PR 405-414) refuting Harrigan (PR 653-669), and supported his proofs of labor, Exhibits F and H (Appendix, pp. 22-25). His deposition thus also refuted the Court's finding that Appellants' assessment work was done outside the claims purportedly for the benefit of non-contiguous claims (PR 104).

Pape's deposition was admissible under authority of  
Moore's Federal Practice, Vol. 4, 1196,

which epitomizes in footnote 14, in the following language:

“The majority opinion indulges in a wholly strained and hampering construction of Rule 26(d)(3). . . .

Professor Moore shows that a party may properly take advantage of clause 2 without necessarily being charged with procuring his own absence. 2 Moore's Federal Practice, 2460-2462, 2492,"

Judge Clark's dissent in

*Arnstein v. Porter*, 154 F2d 464, 478 (CCA2d 1946).

See also:

*Weiss v. Weiner*, 10 FRD 387, 389.

*Frederick v. Yellow Cab Co.*, (USCA3d 1952), 200 F2d 483.

Moreover, Appellee had the duty to show that Pape was available.

*Seiden v. Concordia Fire Insurance Co.*, 49 F2d 474 (DCSDNY).

Appellee made no such showing, admitting he had no evidence that Appellants Vevelstad and Aurora Nickel Company had procured Pape's absence, and stipulating that Vevelstad would testify they had not (PR 342).

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**APPELLANTS' WITNESS RICHELSEN'S TESTIMONY WAS  
COMPETENT, RELEVANT AND MATERIAL.**

Question 3; Point 6 (PR 718).

Frankly Appellants don't know whether they have a ground for Point 6. They thought the Court during Richelsen's testimony (PR 437-463) had stricken much, if

not all, of his testimony; but, the record is indefinite on the subject, simply showing that the Court stated that it doubted the map, Exhibit K, introduced by Richelsen, would have any value (PR 459; 461).

Richelsen said he was a consulting mining engineer with extensive experience with mining claims and their location in Alaska, having been chief engineer, chief geologist, and manager of the Kennecott Copper Company's Alaskan properties (PR 438-439). He prepared Exhibit K, the green outline on which is the approximate location of the ground staked by Appellee, and whose beginning point is Lat.  $57^{\circ}57'33''$ , Long.  $136^{\circ}27'23''$  being obtained from Appellee's Amended Complaint (PR 439; also, PR 54).

The red shading thereon shows Appellants' ground and was platted from the recorded location notices (PR 440) which is approximately correct (PR 460). It shows the conflict between Appellee's and Appellants' claims (PR 440), which had not been shown on Appellee's case in chief.

He prepared the sketch, Exhibit L, admitted without objection (PR 445), taking it (PR 442) from Appellee's Answer to Interrogatory 9, Exhibit B (PR 308), (PR 22-23), showing the discrepancy between claims Yakobi 1 and 2, also Yakobi 11 and 12 (PR 442), with open land between the end lines (PR 444).

He was on Yakobi Island August 5, 1942, when the U. S. Bureau of Mines was doing diamond drilling, the ore being largely confined to Appellants' claims and not disseminated over a vast area, which data he obtained from U. S. Bureau of Mines' drilling records (PR 445-447), also from U. S. Geological Survey Bulletin 931 F,

page 120, of which the Court took judicial notice (PR 462-463).

Appellants submit the map and the sketch, Exhibits K and L, were both admissible and valuable for use as evidence under the rules announced by this Court in

*Grant v. Pilgrim*, 95 F2d 562, 566, 568, 572.

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**BOHEMIA BASIN CAMP WAS NOT A NATURAL OBJECT OR PERMANENT MONUMENT UNDER SECTION 47-3-33, ACLA 1949.**

Question 4; Point 7 (PR 718).

The Court held that “the claims are described with reference to the Bohemia Basin Camp, which the Court finds refers to the cabin.” (PR 105)

All of Appellee’s 45 claims (PR 119-121), except Pelican 28, are tied in to the Bohemia Basin Camp by their location notices, Exhibits 2, 3, and 4.

Nowhere did Appellee’s case in chief (PR 160-326) identify “the” or any particular cabin inland  $2\frac{1}{2}$  to 3 miles from the mouth of Bohemia Creek as being the Bohemia Basin Camp, which Basin Vevelstad said without contradiction was a valley about  $\frac{1}{2}$  mile wide, about 8 miles long, cutting Yakobi Island in two (PR 537). U. S. Coast & Geodetic Survey Chart No. 8260, whereof Appellants urge this Honorable Court to take judicial notice, shows that Bohemia Basin extends from the mouth of Bohemia Creek, on Lizianski Straits, back into Yakobi Island. Norppa said they camped at the Bohemia Basin Camp and “This here is the log cabin, and the woodshed over here, and there are other camps over here but the roofs have been caved in and so on, but this is the only



livable camp" (PR 246) and Flynn said in October and November, 1952, they camped in that same main building on Yakobi 6 (PR 320), without other identification or locus of any particular camp other than to encircle in blue 2 buildings on Exhibit 1, although buildings are also shown on Yakobi 11, and without stating how far apart or how much acreage was occupied by these various "camps." The record doesn't disclose how far apart these "other camps" are, but a distance of 1000 feet, or even 200 feet results in great variation in "tie in" to a mining claim. The trial Court not only said in respect to Appellee's attack upon Appellants' claims "The testimony is in irreconcilable conflict on every point" (PR 100) but also that Appellee's location certificate descriptions were doubtfully sufficient (PR 105). *On rebuttal*—Appellee's witness Goodwin who had never been on but had flown over Yakobi Island said the "upper camp" was known as Bohemia Basin Camp (PR 575), and seemingly said, as had Norppa (PR 246), more than one camp was in Bohemia Basin (PR 576). Appellee's witness Hildre said Bohemia Camp was at Bohemia Creek's outlet (PR 595). Vevelstad said the base camp at the beach was known as the Bohemia Basin Camp and that he built all the buildings on the island except one, called an assay office, at the base camp on the beach (PR 523-524). Harold Hofstad testified Bohemia Basin Camp was at the mouth of Bohemia Creek off which upon arrival there on June 5, 1953, a small boat was anchored and where the supplies were kept and the watchman was (PR 474).

The Court found that the evidence was susceptible of only one inference, i.e.: Appellee's claims were not well known (PR 105).



There was no permanent camp inland  $2\frac{1}{2}$  to 3 miles from Bohemia Basin's limit at the mouth of Bohemia Creek during that time. A camp signifies a place used or occupied. Tent is not synonymous with camp, although a tent in which one lives or works may be properly called a camp. If Flynn and Norppa used or occupied any particular cabin  $2\frac{1}{2}$  to 3 miles inland from Bohemia Basin's limit at the mouth of Bohemia Creek during their some  $7\frac{1}{2}$  days stay on Yakobi Island in October and November, 1952, it was only temporary use and occupation, not a permanent monument, and, if it thereby became a camp, it was only temporarily so.

Such buildings with a crew of men living in them as were  $2\frac{1}{2}$  to 3 miles inland from Bohemia Basin's limit at the mouth of Bohemia Creek in 1941 and 1942 when the government conducted its drilling operations may have been a camp, but they were no longer a camp when use and occupation of them ceased.

U. S. Coast & Geodetic Survey Chart No. 8260 is for the use of mariners navigating the adjacent waters. It designates Bohemia Basin as commencing at the mouth of Bohemia Creek, not as commencing  $2\frac{1}{2}$  to 3 miles inland. There is the place used and known by fishermen under the local name of Bohemia Basin Camp (PR 524).

Appellants submit that a valley about  $\frac{1}{2}$  mile wide and about 8 miles long, cutting Yakobi Island in two (PR 537) is too indefinite a tie under the rule announced by this Court in

*Riley Investment Co. v. Sakow*, 98 F2d 8, 11, and that the trial Court under the evidence could not infer that any particular cabin  $2\frac{1}{2}$  to 3 miles inland from

Bohemia Basin's limit at the mouth of Bohemia Creek was intended by the term "Bohemia Basin Camp" in Appellee's location notices, Exhibits 2, 3, and 4, and constituted a permanent monument or natural object under Sec. 47-3-33, ACLA 1949 (Appendix, pp. 7-8).

Appellants tied their locations through Hope No. 4 (PR 455) Exhibit E, (Appendix, pp. 40-41) to the tunnel, which is a permanent and easily discernible monument and object (Picture, Exhibit O).

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**APPELLANTS' MOTION FOR NEW TRIAL  
SHOULD HAVE BEEN ALLOWED.**

Question 5; Points 8 and 9 (PR 718-719).

Appellants' Motion for New Trial (PR 107-109) was supported by Pape's affidavit (PR 109-112) stating he located his claims in October, 1950, left Bohemia Basin on October 2, 1950, was anxious to be a witness at the trial, but was kept from it by his government employment, leaving for Korea on November 26, 1953, and refuted (PR 109-112) Ward's affidavit (PR 78-81), which was Appellee's only verified evidence opposing Appellants' motion for continuance of trial (PR 76-78), and Brown's affidavit (PR 113-114), wherein he corroborated Pape's deposition, which the Court rejected (PR 99), that he left Yakobi Island around noon October 2, 1950 (PR 355; 376), and Breseman's (PR 114) that he worked with Pape from June 6 to 11, 1953, on the Hope and Rita claims about 2½ miles up Bohemia Valley from the main basin camp on Lisianski Strait, and saw Johnson

and O'Donnell only once during that time, and Breseman's (PR 116-118), which was newly discovered evidence, as stated therein (PR 116), and said he had worked for Appellee and with Stahl in Bohemia Basin in November and December, 1953, and had seen no indications of any blazed boundaries, monuments, or stakes of Appellee's claims, while checking the Hope claims boundaries which were blazed and corners and discovery posts in place and visible, and he and Stahl walked a distance of some 50 to 200 yards, after checking the Hope claims, before coming to any of Appellee's claims, and Stahl told him that he, Stahl, had relocated and restaked the key claims so he could file location notices thereof should the Court hold both Appellee's and Appellants' claims were invalid, and Stahl also told him he had never seen any claims better marked than Pape's claims (PR 116-118). Johnson had said Stahl had measured the greatest share of the claims, and Breseman helped Stahl, and Stahl and Breseman had gone over some of the lines as a separate party (PR 200-201). Appellee did not call Stahl as a witness.

No opposing affidavits were filed.

Breseman's affidavit (PR 116-118) was newly discovered evidence competent and relevant to and supported the issue of Appellants' Hope claims boundaries having been properly blazed with corners and discovery posts in place and that Appellee's claims did not have blazed boundaries, monuments or stakes.

Appellants specifically called it to the Court's attention as newly discovered evidence in their argument (PR 711) on their Motion for New Trial (PR 107-109).

Such Breseman testimony might well have changed the result of the trial.

*Tracy v. Terminal R., etc.*, 170 F2d 635 (CAMo.);

*Murdock v. U. S.*, 160 F2d 358 (CCA, Ark.).

It was not merely cumulative, nor such as to do no more than discredit, contradict, or impeach a witness.

The Court also ignored Pape's affidavit (PR 109-118), despite the facts and situation before the Court (pp. 14-19, *supra*), when it denied (PR 88; 157) Appellants' Motion for Continuance of Trial (PR 76-78), ignored Appellants' request to reserve decision until Pape's evidence could be adduced (PR 95), and rejected Pape's deposition (PR 99).

Appellants, therefore, respectfully submit that the Court abused its discretion in overruling (PR 118) their Motion for New Trial (PR 107-109), in the face of exceptional circumstances calling for a new trial.

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**APPELLANTS WERE ENTITLED TO JUDGMENT ON THEIR  
COMPULSORY COUNTERCLAIM.**

Question 6; Point 10 (PR 719)

Appellants in their answer set forth a counterclaim under Rule 8(a) (Appendix, p. 12), which they therein denominated (PR 73-74) as such under Rule 7(a) (Appendix, p. 12), which Rule required a reply thereto.

Appellee served and filed no Reply, nor any motion against it.

Appellants' Counterclaim is a Compulsory Counterclaim under Rule 13(a) (Appendix, p. 13) and arose



out of the transaction or occurrence that is the subject matter of Appellee's claim (Amended Complaint, PR 53-63), and had they not pleaded it herein they would have been precluded from doing so in an independent action.

*Lesnik v. Public Industrials Corporation*, 144 F2d 968 (CCA NY 1944);

*Penn. R. Co. v. Musante-Hilllips, Inc.*, 42 F.Supp. 340 (DC Cal. 1941).

Appellants submit that their Counterclaim denominated as such required a Reply Rule 7(a), *supra*, or else stands admitted under Rule 8(d) (Appendix, p. 12).

*U. S. v. Hole*, 38 F.Supp. 600 (DC Mont. 1941);

*Porter v. Theo J. Ely Mfg. Co.*, 5 FRD 317, (DC Pa. 1946);

*Sun-Maid, etc., Assn. v. Neustadter Bros.*, 115 F2d 126, 127 (CCA Cal.);

*Peters & Russell v. Dorfman*, 188 F2d 711, 713, (USCA 7).

The trial Court seemingly would have so held had he not criticized the form of the plea (PR 105). Appellants submit that their Counterclaim was well pleaded, and that Rule 9(g), i.e.: "Special damage. When items of special damage are claimed, they shall be specifically stated," required them to plead their special damages, and that under Rule 10(c), i.e.: "Adoption by Reference. Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion . . .", they properly incorporated therein by reference (PR 73) the allegations in their Third Defense (PR 68-73) which were necessary



allegations showing the foundation of their claim to special and exemplary damages, and that their Counterclaim (PR 73-74), assuming without conceding that it was prolix or contained unnecessary allegations, should have been construed in the spirit of Rule 8(f), i.e.: "Construction of pleadings. All pleadings shall be so construed as to do substantial justice," instead of being entirely discarded by the Court of its own volition.

*Hollander v. Davis*, 120 F2d 131 (CCA, Fla);

*Gribble v. Ditto*, 119 F2d 278 (CCA, NY);

*Bachman v. Seaboard Air Lines R. Co.*, 80 F.Supp. 976 (DC, SC);

*Perry v. Creech Coal Co.*, 55 F.Supp. 998 (DC, Ky).

Appellants proved their damages by Vevelstad (PR 544-550) and that he alone would have received annually around \$8,000,000 on royalties plus 25% of the profits, and that he had had an engineer on the ground representing buyers (PR 573). Appellee adduced no evidence whatsoever to rebut Vevelstad's evidence in that respect.

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**APPELLEE'S CLAIMS WERE NOT LOCATED NOR LOCATION CERTIFICATES THEREOF RECORDED AS REQUIRED BY UNITED STATES AND/OR ALASKAN MINING LAWS.**

Question 7; Point 11 (PR 719).

Appellee's only witnesses to actually locating his claims were himself (PR 265-326) and Norppa (PR 211-265).

Appellee's counsel admitted that they used a rather peculiar method in staking the claims (PR 214). Norppa didn't make any discoveries and put in no discovery

posts (PR 226-227). Flynn said he made a discovery on each claim (PR 282), but he didn't take samples from each claim, only from Bureau of Mines' pits (PR 322). Neither testified the ore on any particular claim was such as to justify a reasonable man to mine it. Richelsen said government data showed the ore largely confined to Appellants' claims, not disseminated over a vast area (pp. 60-61, *supra*). Nor did they testify which of their claims the ground whereof the government had diamond drilled, nor that they adopted the previous discoveries of any one. Norppa did not put in all corner monuments on any one of the claims (PR 248). Appellee didn't go around all the boundaries of any one claim prior to November or December, 1953 (PR 324). Flynn said his discovery posts and discovery notices were on the end lines of his various claims (PR 281).

In running the lines Flynn and Norppa started at the same spot, taking off in different directions. Flynn going along the end lines of Yakobi 1 and 2, putting in monuments as he went along (PR 283). The first day Norppa ran the southwest line from Betty 1 to Portia 3 (PR 216); October 27 they worked on the Mayflower Group; October 28 Norppa ran the end lines of 10 claims (PR 218); October 30 the north line of Portia 8 and 9 and end lines of Portia 9, 6, Yakobi 12, 10, 8, and up, he guessed, to Betty 5 center line (PR 220). October 31 Norppa put in the location notices on the line between Betty 1, 2, 7, 8, Yakobi 1, 2, 3, 4, 5, 6, Portia 3, 4, 7 (PR 221). They had a plan for staking all made out before they started (PR 224; 277). Norppa didn't know how the veins run. He had no idea (PR 230). Norppa didn't testify to the Peli-

can group. Flynn's only testimony in regard to them is "We ran the lines around those to complete their staking. We put the corner, end, and discovery posts on all those claims" (PR 291-292). and that he put the corner posts in on Pelican 15, 16, and the other two, and Norppa on Pelican 28, 29, 30 (PR 300). The Court limited Appellants' cross examination to Flynn's stating he put in all notices which Norppa didn't (PR 300).

Each of the location notices of Appellee's 45 claims state, for example Pelican 26, "this claim extends 1500 feet southeast and 0.0 feet from the discovery monument on which this notice is posted, along the center line of said claim," plainly indicating that discovery, if any, was on the end line not within each claim, assuming that such description intelligibly answers the question: Does the claim extend "1500 feet southeast" or "0.0 feet" from the discovery monument. These location notices, Exhibits 2, 3 and 4, over Appellants' objection on that very ground (PR 287), were admitted (PR 288, 293). Appellee said they were carbon copies of those posted on the ground (PR 286). He offered in evidence no others as location certificates and the Court termed them "location certificates" (PR 105); hence, appellants submit their insufficiency must be construed in the light of both Sections 47-3-31 and 47-3-33, ACLA 1949 (Appendix, pp. 7-8). As location notices they don't state either the number of feet in length along the vein each way from the point of discovery or the width on each side of the center of the lode or vein, but instead say they include 300 feet of surface ground on each side of the claim's center line without stating that the claim's center line

is on the lode or vein, and as location certificates they don't give the date of posting the location notice or tie in to a permanent monument or natural object. The Court said Appellee's claims were not well known enough to constitute permanent monuments (PR 105). Appellee said he posted all his location notices and prepared them in the evenings after coming in from work (PR 285; 301), so inferentially they were not all posted on the same day or on the date of location stated in them. Appellee said he and Norppa posted them on October 30 (PR 315). In May, 1953, Appellee moved Portia 5 discovery post 70 feet southwest and Portia 6's 60 feet northeast (PR 309-311). Discovery on Yakobi 11 was about 300 feet southwest of the northeast center end post (PR 305); on Yakobi 12 about 40 feet northeast of the southeast center end post (PR 306); discovery on Yakobi 9 was some 30 or 40 feet from the end line (PR 302-303); on Yakobi 1, 2, 3, and 4 discovery was 5 or 10 feet from center end line (PR 301-302); Yakobi 10, discovery was 20 feet northeast of the southwest center end post (PR 304). These 8 claims were among those whose title the Court quieted in Appellee (PR 119-120). Their location notices did not comply with Sec. 47-3-31, *supra*, by stating the distance each way long the center of the claim, let alone the vein, from the discovery point. Portia 5 and 6 were also two of those claims (PR 120). Inasmuch as Appellee moved their discovery posts in May, 1953, evidently their location notices likewise did not comply with Sec. 47-3-31. Nor could those 10 location notices have complied with Sec. 47-3-33 when recorded, as the Court found (PR 105), as location certificates because, instead of being 1500 feet in length, as stated in them, if the claimed



situation on the ground prevailed (as the Court held, PR 106), inasmuch as in each instance they said they ran 1500 feet in a designated compass direction from the discovery monument, they actually were short anywhere from 5 to 300 feet less than 1500 feet. Apparently some such discrepancy existed in all of them because Appellee said "They vary, most of them 5 or 10 or 15 feet, and in 6 instances, I think it is, they are over 30 feet" (PR 303), and "a few of them are singles, but most of them are in pairs" (PR 317). The actual situation was illustrated by Richelsen through his sketch, Exhibit L (PR 441-445), leaving open public domain between Yakobi 11 and 12 of some 340 feet. Vevelstad said he found 8 of Appellee's claims, 2 going over a precipice into a 400 feet deep canyon and 6 having a perimeter of 1400 feet which he measured with a line (PR 539, 540; 526-527), without adjoining or parallel lines, and that they were staggered locations. Harold Hofstad said within a distance of 2000 feet they found four notices, double notices (PR 489). Discarding Vevelstad, Hofstad, and Richelsen's testimony, clearly at least 10 of Appellee's claims either were so located on the ground as to leave open public domain between them which the trial Court disregarded or else their location notices did not comply with Sec. 47-3-31, *supra*.

Flynn and Norppa were both experienced mining engineers, Flynn with staking mining claims in Canada and the United States, Norppa in Canada (PR 265-266; 211-212; 226). They are not entitled to liberal construction of their location notices as though they were ignorant prospectors or inexperienced miners. Their failure in



their notices to state the distance along the vein and the width each way therefrom and the date of location is material because all of Appellants' location notices and certificates of location, except that of Svere 3, as well as Pape's proof of labor for 1952 were recorded in the Sitka Recording Precinct prior to their locating Appellee's claims in October and November, 1952.

*Jualpa Co. v. Thorndyke*, 4 A. 207.

Nor is Yakobi Island a new mining district, Vevelstad having located its ore bodies in 1920 (PR 523), which instant facts, Appellants submit, make inapplicable the principle stated by this Court in

*Walton v. Wild Goose Mining Co.*, 123 F. 209.

Those recordations were constructive notice to Appellee of those location notices, certificates of location, and proof of labor.

*Meydenbauer v. Stevens*, 78 F. 787.

Appellants specifically alleged that prior recording (PR 70), also Appellee's knowledge of Appellants' prior ownership and possession (PR 73), Appellee's witness Harriگان admitted knowledge of them in May, 1953 (PR 654-655). Nonetheless, the trial Court held Appellants failed to give Appellee prior actual knowledge (PR 103).

Moreover, as stated, the trial Court held Appellee's location notices were certificates of location; hence, they are not entitled to the great indulgences with which inaccuracies and markings in initial notices are treated.

*Vedin v. McConnell*, 22 F2d 735 (CCA 9).

Appellee had 4 maps of his claims, none of which agree: A map, Exhibit A attached to and incorporated in his

Amended Complaint (PR 58) and a part thereof under Rule 10(c) (Appendix, p. 83), which is now detached from the pleading but should not be confused with Appellants' Exhibit A; Exhibit 1, which does not show Pelican 15, 16, 25, 26, 28, 29 and 30 (PR 291) but which are shown on the map attached to the Amended Complaint (PR 298); Plate 20, U.S.G.S. Bulletin 931F, Exhibit A, which Appellee claimed he used in laying out his claims (PR 278); Exhibit C, a tracing which Appellee filed for record when recording his location notices (PR 309). Space is too limited herein to discuss the variances in these maps. But, for instance, the only straight line on Exhibit 1 runs either  $33^{\circ}$  North or  $33^{\circ}$  from true north. If the arrow thereon indicates magnetic north, that line is  $63^{\circ} 21'$  from true north. On the map attached to the amended complaint seemingly this same line is the south line of a block and runs  $23^{\circ}$  west of true north. Exhibit C names the lake north of Takanis Lake as "Flynn" lake, Exhibit 1, as "Lynn Lake." Appellee's Exhibit 1 was admitted over Appellants' objection as too remote, upon Appellee's assurance he would connect it up (PR 165), which he did not do. Appellee didn't complete the staking of the Takanis group (PR 288-289), to which are tied his claims in his Complaint (PR 4) and Amended Complaint (PR 54), and the map, Exhibit A attached to and made a part of his Amended Complaint (PR 58).

All of Appellee's 45 claims (PR 119-121), except Pelican 28, purportedly tie in to Bohemia Basin Camp, which is not a natural object or permanent monument (See Q. 4, Point 7, pp. 61-64 *supra*).

Stahl, who measured the greatest share of the claims, and who with Breseman went over some of the lines as a separate party, was not called as a witness, but Exhibit 1 was offered through Johnson who said he had not checked out all of Appellee's claims (PR 200-201).

Appellants submit that the rule, applied by the trial Court (PR 106), that marks on the ground govern, after finding: "The descriptions given in the location certificates of Appellee are such as to make it doubtful whether they are sufficient" (PR 105) does not permit deception of the adverse claimant, and that no competent evidence was adduced of Appellee's claim markings on the ground, and none whatever of Pelican 15, 16, 25, 26, 28, 30, and that Appellee is bound by the descriptions in his Amended Complaint and the map attached to and made a part of it (PR 54-58) and in his location notices and Exhibit C which he filed with them with the Sitka Recorder, and that he made no discoveries, and adopted no known discoveries, and did not locate his claims along their veins or lodes, if any, and did not mark the boundaries of his claims or put his discovery post at or adjacent to the place of discovery, but put them on the end lines, whereas a discovery must be within a claim, and recorded no certificates of location, all as required by Sec. 47-3-31 and Sec. 47-3-33, *supra*.

**PAPE'S PROOFS OF LABOR WERE PRIMA FACIE EVIDENCE OF THE PERFORMANCE OF THE WORK AND MAKING THE IMPROVEMENTS THEREIN STATED.**

Question 8; Point 12 (PR 719).

Appellants' verified, recorded proofs of labor for the assessment years ending noon July 1, 1952, and July 1, 1953, respectively, were admitted, over Appellee's objection that they were immaterial (PR 433), as Exhibits F (PR 434) and H (PR 435) (Appendix, pp. 22-25).

They were not contradicted, other than possibly by Klein's negative testimony that in his opinion only 6 man 8 hour days labor had been done upon the trail (PR 687-689).

Appellants submit that obliterations of assessment work, without the performer's fault or act, are no more to be charged against the performer than removal of stakes, monuments or notices without the locator's act or fault.

*Moore v. Steelsmith*, 1 Alaska 121.

These proofs were corroborated by Pape's deposition (pp. 27-28 supra), which the trial Court rejected (PR 99).

Section 47-3-55, ACLA 1949 (Appendix, pp. 10-11), provides that such proofs, when recorded, are prima facie evidence of the performance of the work and making of the improvements therein stated. These proofs were sufficient; hence, Appellee had the burden of disproving them.

*Babcock v. O'Lanagan*, 7 Alaska 171.

They showed labor and time spent each year on the trail, which Vevelstad said was the only feasible trail (PR 569) and which Appellee's counsel Ward said he had traveled 5 times (PR 695).

Practically every witness had something to say about using the trail, showing the necessity of its use to go inland  $2\frac{1}{2}$  to 3 miles into Bohemia Basin from its limit on the beach at Bohemia Creek's mouth.

All the decisions hold that trail work is good assessment work.

Without conceding that any of Appellants' claims are noncontiguous other than Beach 1, 2, and 3, through which the trail ran, and possibly Takanis 1, or that the work was done outside them, they submit that work on a trail affording access to claims is good annual labor, and that those proofs as well as Appellants' witnesses Hofstads, Jones, and Vevelstad proved good and sufficient assessment work on the Rita and Hope group of claims, and that it also benefited the Svere group and Takanis 1 claims.

The trial Court not only ignored the prima facie evidence value of these proofs of labor but placed the burden upon Appellants to prove that the work benefited all their claims (PR 104), instead of placing the burden upon Appellee to disprove those proofs of labor, and disregarded Appellants' positive evidence.

*Lowe v. U.S. Smelting, Refining & Mining Co.*, 175 F2d 486 (USCA 9).



**APPELLEE SHOULD HAVE FILED A REPLY BRIEF  
TO APPELLANTS' TRIAL BRIEF.**

Question 9; Point 13 (PR 13).

Appellants called the trial Court's attention in their Motion for New Trial (PR 108) to Appellee's failure to file a reply brief refuting the law and facts stated in their trial brief. They concede they have found no authorities on the effect of such delinquency or the duty of one litigant to answer or reply to the other litigant's brief.

Appellee neither replied to, moved against, nor adduced evidence to disprove Appellants' Compulsory Counterclaim (PR 73-74), the burden of proof whereof they admit was upon them. Their Third Defense (PR 68-73) was also an affirmative plea for relief, and in their trial Brief (PR 93-97), even though hesitantly, they attacked the credibility of Appellee's counsel Ward, whose affidavit (PR 78-81) was Appellee's only sworn evidence in opposing Appellants' Motion for a Continuance of Trial (PR 76-78; 82-88).

Appellants submit that Appellee's failure to answer or reply to their brief constitutes a waiver, even an admission, of Appellants' argument on those affirmative issues and charges. The trial Court found "the evidence is in irreconcilable conflict on every point" (PR 100), speaking of Appellee's contentions (PR 99), and "the descriptions given in Appellee's location certificates are such as to make it doubtful whether they are sufficient" (PR 105), but nonetheless held for Appellee (PR 106).

**THE BURDEN SHOULD HAVE BEEN PLACED UPON APPELLEE TO PROVE HIS CLAIM FOR RELIEF AND TO RELY UPON THE STRENGTH OF HIS OWN TITLE IN PROOF THEREOF.**

Question 10; Points 14 and 15 (PR 719).

Appellants believe these two points can be logically discussed jointly. They called attention to both of them in their Motion for New Trial (PR 109). They argued both of them in the hearing on that Motion (PR 703).

Although Appellee was the plaintiff, the learned trial Court in its Opinion (PR 97-106), instead of first determining the sufficiency of Appellee's title, although finding "the testimony is in irreconcilable conflict on every point" in respect to Appellee's contentions (PR 99-100), held (PR 100-104) Appellants' locations were invalid, then said the next question for determination is the validity of Appellee's 45 claims (PR 104), whereas Appellants submit the first question was the validity of Appellee's claims inasmuch as he was the plaintiff. Thereupon although finding "the descriptions given in Appellee's location certificates are such as to make it doubtful whether they are sufficient" (PR 105), the Court held that Appellee was entitled to have title to his 45 claims quieted (PR 105-106). Appellants realize this reverse order of determination didn't effect the result as reflected by the judgment (PR 119-122), but submit it clearly shows the trial Court erroneously either cast the burden upon Appellants or thought they were the plaintiffs.

In his case in chief (PR 160-326) Appellee adduced no evidence of the extent of conflict between his and Appellants' claims. The Court sustained Appellee's objection on the ground that it was improper cross examination

when Appellants sought to elicit that information from Johnson (PR 177-180), Appellee's counsel stating "I didn't ask a single question in respect to Pape's locations or even if he knew Pape" (PR 177-180). The particular purported map, Exhibit 7, was later admitted on Appellee's rebuttal (PR 619). The Court volunteered that there was only one camp in Bohemia Basin (PR 246), although Norppa said there were several camps (PR 246), and several witnesses referred to the upper and lower camp, and Vevelstad, Harold Hofstad, and Hildre referred to the Bohemia Basin Camp as being at Bohemia Creek's mouth.

The trial Court originally indicated he thought the burden was on Appellants to show how their claims conflicted with Appellee's when it said: "Why not wait until the defense is in, and then you can rebut it. There is no use anticipating the defense" (PR 289), also when it said: "I have been wondering all along how it could be material" that Appellee's discoveries were not at the places named in his location notices (PR 305).

Appellee put in Exhibit 1 by Johnson (PR 166), but he admitted that Stahl (who was not called as a witness) measured the greatest share of the claims and with Breseman had gone over some of the lines as a separate party and he, Johnson, had not checked all the claims (PR 200-201). Furthermore, Pelican 15, 16, 25, 26, 28 and 30 were not shown thereon. Appellants submit that Exhibit 1 did not prove Appellee's title or shift the burden of proof to them. See argument Question 7 (pp. 68-75 *supra*).

When Appellee closed his case in chief, Appellants moved for dismissal under Rule 41(b) (Appendix, pp. 15-16) which the Court denied (PR 326-340), notwithstanding it had previously indicated, as stated, that Appellee had the burden to prove wherein Appellants wrongfully claimed any of Appellee's claims (PR 180), but which proof Appellee did not make. Whatever proof Appellee made thereof, he made on Rebuttal, insufficiently, too, Appellants contend.

This suit was brought by Appellee to quiet title to 102 mining claims under Section 56-1-91, ACLA 1949 (p. 1, *supra*).

Appellee could succeed only upon the strength of his own title.

*Ripinski v. Hinchman* (USCA 9) 181 F.786, 3 AFR 496.

Patton on Titles announces the same rule: "Plaintiff can recover only on the strength of his own title." p. 917.

*Anderson v. Anvil Hydraulic Co.*, 3 Alaska 496.

The burden of proof was on Appellee under the well known rule, i.e.:

"The complainant in any action to quiet title, to remove a cloud thereon, or to determine an adverse claim has the burden of proof as to all issues arising upon essential allegations of the complaint. He must prove title in himself if the answer denies his title or *if the defendant claims title adversely*. He must also assume the burden of showing compliance with conditions precedent to his right to relief." (emphasis supplied)

Quieting Title, 44 Am. Jur., Sec. 83, pp. 67-68.

“In an action to quiet title or remove a cloud thereon the plaintiff has the burden of proving the facts alleged on which his right to judgment is based.

“The burden is on the plaintiff to establish that he has a perfect or equitable title *regardless of whether the defendant's title is valid or invalid*, and, when properly in issue under the pleadings, the plaintiff has the burden of showing that his title or right is superior to that of the defendant.” (emphasis supplied).

Quieting Title, 74 CJS Sec. 76(B)(1)(a) and (b), pp. 118-119.

Appellee did not sustain that burden on his case in chief, and Appellants' Motion to Dismiss under Rule 41(b), *supra*, should have been granted; in fact, Appellee did not sustain that burden throughout the entire trial, and his action should have been dismissed.

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**APPELLEE ON HIS CASE IN CHIEF SHOULD HAVE BEEN REQUIRED TO PROVE THE DEFINITE EXTENT, IF ANY, BETWEEN HIS AND APPELLANTS' CLAIMS.**

Question 11; Point 16 (PR 720).

Appellants presented this point to the trial Court in their argument (PR 712) on their Motion for New Trial, and had tried to get at the point in cross examining Johnson but were overruled (PR 177-180).

They urge that such conflict necessarily is an issue made by Appellee's pleadings and that he had the burden to show actual injury which could only be done on his case in chief by showing the extent of conflict between



Appellants' 27 claims and the 102 claims he alleged to have located in both his Complaint (PR 3-10) and Amended Complaint (PR 53-61).

“Ordinarily, one must wait until his rights have been actually interfered with before he can, by suit to quiet title, implead another from whom he anticipates an injury.”

Quieting Title, 44 Am. Jur., p. 31, Sec. 38.

“Plaintiff's proofs must clearly show that the claim set up by defendant is invalid, and that it constitutes a cloud on plaintiff's title.”

Quieting Title, 74 CJS, p. 128, Sec. 81.

Neither did Appellee by competent evidence prove that conflict on his rebuttal.

Appellants submit that the principles are applicable in Question 10 (pp. 79-82, *supra*).

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**APPELLEE DISQUALIFIED HIMSELF TO LOCATE MINING CLAIMS IN ALASKA WHEN HE VOLUNTARILY STATED HE WAS A CANADIAN CITIZEN.**

Question 12; Point 17 (PR 720).

Appellants did not attack Appellee's citizenship. Appellee himself on direct examination in chief said he was a Canadian citizen in response to a question put by his own counsel, not by Appellants' counsel (PR 265).

Appellants are familiar with the rule in *McKinley Creek Mining Company v. Alaska M. Co.*, 183 U.S. 563, 571, but reiterate they did not attack Appellee's citizenship. For unknown reasons he himself put in the record his Canadian citizenship.

Sec. 47-3-9, ACLA 1949 (p. 11, Appendix) according reciprocal mining rights to native born Canadian citizens has never been put in effect for the reasons stated in U. S. Department of Interior Circular No. 430, United States Mining Laws (Appendix, p. 11). Moreover, Appellee did not state he was a native born Canadian, but simply a Canadian citizen.

Sec. 47-3—1, *ibid.* (Appendix, p. 1), which was extended to Alaska by Sec. 47—3-21, *ibid.* (Appendix, pp. 1-3), provides that all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law. Appellee did not testify that he had declared his intention to become a United States citizen.

Appellee thus voluntarily admitted that he was disqualified to locate mining claims in Alaska.

Appellants suggest that this Court in

*Vedin v. McConnell*, 22 F2d 753, 758,

clearly indicated that had Vedin still remained an unpardoned, imprisoned felon, his location would be void, not simply voidable. Likewise, here, had Appellee testified that he had declared his intention to or had become a United States citizen subsequent to his making his locations in October and November, 1952, it would have cured his disqualification; but, not having done so, and his Canadian citizenship having been adduced by himself, not by Appellants, his locations were void, not voidable.

Appellants raised this point on argument (PR 327-329) in support of their motion to dismiss under Rule 41(b), FRCP (Appendix, pp. 15-16), also, on argument (PR 703) of their Motion for New Trial.

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**THE JUDGMENT WAS CONTRARY TO THE LAW AND TO THE  
PREPONDERANCE OF EVIDENCE.**

Question 13; Point 18 (PR 720).

Appellants raised this point on their Motion for New Trial (PR 109). Without reiteration, they submit that this point is supported by all their argument and evidentiary facts discussed in Questions 1 to 10, *supra*.

Wherefore, Appellants urge that the trial Court's judgment of April 24, 1954, should be set aside and reversed, Appellee's action dismissed, and the trial Court directed to enter judgment for damages against Appellee in accordance with their Counterclaim (PR 73-75).

Dated, Juneau, Alaska,

November 12, 1954.

R. E. ROBERTSON,

ROBERTSON, MONAGLE & EASTAUGH,

*Attorneys for Appellants.*

**(Appendix Follows.)**

The first part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles. The second part of the paper is devoted to a discussion of the structure of the nucleus. It is shown that the structure of the nucleus is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles.

The third part of the paper is devoted to a discussion of the structure of the molecule. It is shown that the structure of the molecule is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles. The fourth part of the paper is devoted to a discussion of the structure of the crystal. It is shown that the structure of the crystal is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles.

The fifth part of the paper is devoted to a discussion of the structure of the liquid. It is shown that the structure of the liquid is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles. The sixth part of the paper is devoted to a discussion of the structure of the gas. It is shown that the structure of the gas is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles.

The seventh part of the paper is devoted to a discussion of the structure of the plasma. It is shown that the structure of the plasma is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles. The eighth part of the paper is devoted to a discussion of the structure of the solid. It is shown that the structure of the solid is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles.

The ninth part of the paper is devoted to a discussion of the structure of the liquid crystal. It is shown that the structure of the liquid crystal is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles. The tenth part of the paper is devoted to a discussion of the structure of the superconductor. It is shown that the structure of the superconductor is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles.

## **Appendix.**





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## Appendix

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United States and Territorial Mining Laws, quoted from Alaska Compiled Laws Annotated, 1949.

“§ 47-3-1. Deposits and lands open to exploration, occupation and purchase: Regulations: Local customs and rules. Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States. (41 Stat 437; CLA 1933, § 322; 30 USC § 22.)”

“§ 47-3-21. Extension of United States laws: Lands below line of high tide or high-water mark subject to exploration: Rules and regulations: Exclusive permits: Right to dump tailings: Pumping from sea: Roadway: Title: Termination of rights by state. The laws of the United States relating to mining claims, mineral locations, and rights incident thereto are hereby extended to the Territory of Alaska: Provided, That, subject only to the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, and to the laws for the protection of fisheries, and subject also to such general rules and regulations as the Secretary of the Interior may prescribe for the preservation of order and the prevention of injury to the fisheries, all land below the line of ordinary high tide on tidal

waters and all land below the line of ordinary high-water mark on nontidal water navigable in fact, within the jurisdiction of the United States, shall be subject to exploration and mining for gold and other precious metals by citizens of the United States, or persons who have legally declared their intentions to become such, under such reasonable rules and regulations as the miners in organized mining districts may have heretofore made or may hereafter make governing the temporary possession thereof for exploration and mining purposes until otherwise provided by law: Provided further, That the rules and regulations established by the miners shall not be in conflict with the mining laws of the United States; and no exclusive permit shall be granted by the Secretary of the Interior authorizing any person or persons, corporation, or company to excavate or mine under any of said waters, and if such exclusive permit has been granted it is hereby revoked and declared null and void. The rules and regulations prescribed by the Secretary of the Interior under this section shall not, however, deprive miners on the beach of the right hereby given to dump tailings into or pump from the sea opposite their claims, except where such dumping would actually obstruct navigation or impair the fisheries, and the reservation of a roadway sixty feet wide under the tenth section of the Act of May 14, 1898 (48 USC §359; § 47-2-2 herein), entitled 'An Act extending the homestead laws and providing for right-of-way for railroads in the District of Alaska, and for other purposes,' shall not apply to mineral lands or town sites. No person shall acquire by virtue of this section any title to any land below the line of ordinary high tide or the line of ordinary high-water mark, as the case may be, of the waters described in this section. Any rights or privi-



leges acquired hereunder with respect to mining operations in land, title to which is transferred to a future State upon its admission to the Union and which is situated within its boundaries, shall be terminable by such State, and the said mining operations shall be subject to the laws of such State. (31 Stat 329; CLA 1933, § 321; am 52 Stat 588; 61 Stat 916; 48 USC § 381.)”

“§ 47-3-22. Length of claims along veins or lodes: Location not to be made until discovery of vein or lode: Width at surface: End lines. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, located prior to May 10, 1872, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the 10th day of May 1872, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th day of May 1872 render such limitations necessary. The end lines of each claim shall be parallel to each other. (RS § 2320; CLA 1933, § 323; 30 USC § 23.)”

“§ 47-3-23. Locator’s exclusive rights of possession and enjoyment: Extralateral rights: Entry upon surface of claim of another. The locators of all min-

ing locations made on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim existed on the 10th day of May 1872 so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. Nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another. (RS § 2322; CLA 1933, §326; 30 USC § 26.)”

“§ 47-3-25. Regulations by miners of district: Subject matter: Reference to natural objects or permanent monuments: Records of claims: Annual labor or improvements: Amount: Claims in common: Relocation: Resumption of work: Failure of coowners to contribute proportion: Commencement of period: Expenditures on tunnels. The miners of each mining

district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims made after May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the 10th day of May 1872, and until a patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year. On all claims located prior to the 10th day of May 1872, \$10 worth of labor shall be performed or improvements made each year, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several coowners to contribute his proportion of the expenditures required hereby, the coowners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent coowner personal notice in writing or notice by publication in the newspaper published

nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his coowners who have made the required expenditures. The period within which the work required to be done annually on all unpatented mineral claims located since May 10, 1872, including such claims in the Territory of Alaska, shall commence at 12 o'clock meridian on the 1st day of July succeeding the date of location of such claim.

Where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since May 10, 1872; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by this section. On all such valid claims the annual period ending December 31, 1921, shall continue to 12 o'clock meridian July 1, 1922. (RS § 2324; 18 Stat 315; 21 Stat 61; 42 Stat 186; CLA 1933, §§ 328-331; 30 USC § 28.)”

“§ 47-3-30. Manner of locating claims: Failure to comply with act. Any person who discovers upon the public domain in Alaska any lode or vein of rock in place, or any placer deposit which is open to location under the Mining Laws of the United States, may locate a lode mining claim or placer mining claim thereon by posting a notice of location and by marking the boundaries as herein provided. Any attempted location of a mining claim that does not fully comply



with the provisions of this Act (§§ 47-3-30—47-3-34, 47-3-51, 47-3-53, 47-3-55—47-3-57 herein) shall be null and void. (L 1933, ch 83, § 1, p 159; CLA 1933, § 354.)”

“§ 47-3-31. Designation of location of claim: Lode claims: Posting notice: Contents: Monuments: Marking boundary lines: Witness monuments. The discoverer of a lode claim shall designate the location as follows:

(1) By posting on the surface at or adjacent to the point of discovery a plain sign or notice containing:

- (a) The name of the lode claim;
- (b) The name of the locator or locators;
- (c) The date of the location;

(d) The number of feet in length claimed along the vein each way from the point of discovery, and the width on each side of the center of such lode or vein, and

(2) By erecting on the vein at the center of each end line and at each corner or angle of the claim substantial monuments of stone or setting posts, not less than three feet in height nor less than three inches in diameter hewn and marked with the name of the claim, the position or number of the monument and the direction of the boundary lines, and by cutting out, blazing or marking the boundary lines so that they can be readily traced. Where it is impracticable to place a monument in its true position, a witness monument shall be erected and marked so as to indicate the true position of the corner or angle. (L 1933, ch 83, § 2, p 160; CLA 1933, § 355.)”

“§ 47-3-33. Certificate of location: Recordation: Time for: Contents: Failure to record: Effect: Com-



pliance after ninety days. The locator or locators of any lode claim or placer claim shall within ninety (90) days after the date of posting the notice of location on the claim, cause such claim to be recorded by filing with the Recorder of the Recording District in which the claim is located, a Certificate of Location which shall contain:

- (a) The name or number of the claim;
- (b) The number of feet in length and width of the claim;
- (c) The date of discovering and of posting the notice of location;
- (d) The name of the locator or locators;
- (e) A description of the claim with such reference to some natural object or permanent monument that an intelligent person, with a knowledge of the prominent natural objects and permanent monument in the vicinity, could identify the claim.

Failure to file for record the Certificate of Location, within the ninety (90) days as herein provided, shall constitute an abandonment of the claim and the ground shall be open to location. Provided, however, That full compliance with the provisions of this Section, after the ninety (90) day period has elapsed but before the ground has been located by another, shall operate to renew the location and save the rights of the original locator. (L 1933, ch 83, § 4, p 161; CLA 1933, § 357.)”

“§ 47-3-34. Amended locations: Amendment of notices and change of locations: Filing amended certificate of location. Notices may be amended at any time and monuments changed to correspond with the amended location but no change shall be made which will interfere with the rights of others. Whenever

monuments are changed or an error has been made in the notice or in the Certificate of Location, an amended Certificate of Location shall be filed for record in like manner and with like effect as the original Certificate. (L 1933, ch 83, § 5, p 162; CLA 1933, § 358.)”

“§ 47-3-51. Requirement of performance: Forfeiture for noncompliance: Suspension of requirement. During each year beginning at noon on the first (1st) day of July, and until patent has been issued therefor, annual labor shall be performed or improvements made on, or for the benefit or development of each mining claim in the Territory of Alaska to the extent required by the laws of the United States applicable to Alaska. Upon failure of the owner of any mining claim to perform the annual labor or make the improvements required by the laws of the United States such claim shall become forfeited and open to location by others as if no location of the same had ever been made; provided, that whenever the general laws of the United States requiring annual labor upon mining claims in Alaska are suspended, the laws of Alaska requiring annual labor upon mining claims shall likewise be suspended upon the same terms and conditions. (L 1933, ch 83, §6, p 162; CLA 1933, §359; am L 1941, ch 23, § 1, p 61.)”

“§ 47-3-53. Affidavit: Time for filing: Contents. Within ninety (90) days after the first (1st) day of July of each year the owner of such mining claim, or some other person having knowledge of the facts, shall make and file for record with the Recorder for the District in which the claim is located, an affidavit showing the performance of such labor or the making of improvements. The affidavit shall contain:

(a) The name or number of the mining claim and where situated;

(b) The number of day's work done and the character and value of the improvements made;

(c) The date of the performance of such labor and of the making of improvements;

(d) At whose instance the work was done of the improvements made;

(e) The actual amount paid for such work and improvements, and by whom paid, when the work was not done by the owner or his lessee. (L 1933, ch 83, § 7, p 162; CLA 1933, § 360.)"

"§ 47-3-55. Effect of recording: Burden of proof where affidavit not filed in time. The affidavit when recorded as provided in this Act (§§ 47-3-30—47-3-34, 47-3-51, 47-3-53, 47-3-55—47-3-57 herein) shall be prima facie evidence of the performance of the work or of making the improvements therein stated, but if such affidavit be not filed within the time fixed by this Act the burden of proof shall be upon the claimant to establish the performance of such work or the making of such improvement. (L 1933, ch 83, § 8, p 163; CLA 1933, § 360.)"

Quoted from Title 30 USCA, Section 28a, 1953 Cumulative Annual Pocket Part, Page 11, Act of June 29, 1950:

"That the time during which labor may be performed or improvements made, under the provisions of section 2324 of the Revised Statutes of the United States (section 28 of this title), on any unpatented mining claim in the United States, including Alaska, for the period commencing July 1, 1949, is hereby extended until the hour of 12 o'clock meridian on the 1st day of October 1950: Provided, That assessment work or improvements required for the year ending

at 12 o'clock meridian July 1, 1951, may be commenced immediately following 12 o'clock meridian July 1, 1950."

Act of June 29, 1950, c. 404, 64 Stat 205.

Quoted from Department of Interior Circular No. 430, United States Mining Laws, approved April 11, 1922:

"112. Section 13, act of May 14, 1898, according to native-born citizens of Canada 'the same mining rights and privileges' in the Territory of Alaska as are accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada, is not now and never has been operative, for the reason that the only mining rights and privileges granted to any person by the laws of the Dominion of Canada are those of leasing mineral lands upon the payment of a stated royalty, and the mining laws of the United States make no provision for such leases."

Quoted from Alaska Compiled Laws Annotated, 1949:

"§ 47-3-9. Reciprocity with Canada: Greater rights not to be accorded: Rules and regulations. Native-born citizens of the Dominion of Canada shall be accorded in Alaska the same mining rights and privileges accorded to citizens of the United States in British Columbia and the former Northwest Territory by the laws of the Dominion of Canada or the local laws, rules and regulations; but no greater rights shall be thus accorded than citizens of the United States or persons who have declared their intention to become such may enjoy in Alaska; and the Secretary of the Interior shall from time to time promulgate and enforce rules and regulations to carry this provision into effect. (30 Stat 415; CLA 1933, § 353; 48 USC § 392.)"



“Rule 7. Pleadings Allowed; Form of Motions

“(a) Pleadings. There shall be a complaint and an answer; and there shall be a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if leave is given under Rule 14 to summon a person who was not an original party; and there shall be a third-party answer, if a third-party complaint is served. No other pleadings shall be allowed, except that the court may order a reply to an answer or a third-party answer. As amended Dec. 27, 1946, effective March 19, 1948.”

“Rule 8. General Rules of Pleading

“(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court’s jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

\* \* \* \* \*

“(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.”



“Rule 9. Pleading Special Matters

\* \* \* \* \*

“(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.”

“Rule 12. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on Pleadings.

\* \* \* \* \*

“(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.”

“Rule 13. Counterclaim and Cross-Claim

“(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction, except that such a claim need not be so stated if at the time the action was commenced the claim was the subject of another pending action. As amended Dec. 27, 1946, effective March 19, 1948.”

## “Rule 26. Depositions Pending Action

\* \* \* \* \*

“(d)(3)(5) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: \* \* \* or 5, upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.”

## “Rule 33. Interrogatories to Parties

“Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served after commencement of the action and without leave of court, except that, if service is made by the plaintiff within 10 days after such commencement, leave of court granted with or without notice must first be obtained. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within 15 days after the service of the interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Within 10 days after such service of interrogatories a party may serve written objections thereto together with a notice of hearing the objections at the earliest practicable time. Answers to interrogatories to which objection is made shall be deferred until the objections are determined.

“Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the same extent as provided in Rule 26(d) for the use of the deposition of a party. Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court, on motion of the deponent or the party interrogated, may make such protective order as justice may require. The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. The provisions of Rule 30(b) are applicable for the protection of the party from whom answers to interrogatories are sought under this rule. As amended Dec. 27, 1946, effective March 19, 1948.”

#### “Rule 41. Dismissal of Actions

\* \* \* \* \*

“(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. In an action tried by the court without a jury the court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order

for dismissal otherwise specifies, a dismissal under this subdivision or any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits. As amended Dec. 27, 1946, effective March 19, 1948.”

“Rule 52. Findings by the Court

“(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b). As amended Dec. 27, 1946, effective March 19, 1948.

“(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are



made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.'''

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October 7, 1953.

Faulkner, Banfield & Boochever,  
Attorneys at Law,  
Box 1121,  
Juneau, Alaska.

Attention: Mr. Norman C. Banfield.

Re: No. 6840-A—E. Miles Flynn v. William L. Pape,  
et al.

Dear Norman:

I am informed that Mr. Pape is now enroute to Korea and that probably he will not return until about January 1st next. Therefore, I notify you that the defendants will be unable to go to trial in the above cause on December 14th, next, and that in all likelihood they will not be able to go to trial before about February 1, 1954.

You will recall that last Friday when you called this suit up for trial date setting, I told Judge Folta that I thought Mr. Pape was enroute to Korea and I could not agree to the case being set for December 14th.

Cordially,

R. E. ROBERTSON

RER:er

CC: Clerk District Court, Juneau.



November 12, 1953

Hon. George W. Folta,  
U. S. District Judge,  
Federal Building,  
Ketchikan, Alaska.

Re: Suits Nos. 5744-A, 5745-A, and 5746-A—The Nakat  
Packing Corporation—Union Bay Fire.

Dear Judge:

As you know, the only issue remaining to be tried in the above causes is that of the amount of damages suffered by the Plaintiffs.

My associates, Clarke, Clarke & Albertson, and I think that ample time has elapsed for both parties to be ready to try that issue as soon as it meets the Court's convenience.

I am therefore today filing a formal Petition requesting that the trial on those issues be set for December 14, 1953, or as soon thereafter as meets your convenience.

I believe you have one cause presently set for trial on that date, and on the 2nd ultimo, you set Case No. 6840-A, Flynn v. William L. Pape, et al., for trial to follow that case. However, I informed the Court at that time that I understood that one of the defendants, who is an important witness, was enroute to Korea, and I could not agree to the case being set for December 14th. You then told me that I could later make an application for re-setting, which I anticipate doing early next month. The defendants cannot go to trial in that suit in the absence of Defendant Pape, and from what I can presently learn, he will be, in December, at some unknown destination in the Orient.

I had a letter from Wilfred a few days ago, from which I understood that Pat Gilmore had also suggested that if a settlement was not negotiated, an early trial be had; but of course Pat will have to speak for himself, and I don't pretend to otherwise know his views of the question. I write you so that you may be apprised, before your return to Juneau, of the Plaintiffs' desire to have an early trial in the Union Bay Fire Suits.

With best wishes,

Cordially,

R. E. ROBERTSON

RER:jp

3 CC: P. J. Gilmore, Jr.

1 CC: Clarke, Clarke & Albertson

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November 28, 1953.

Hon. George W. Folta,

District Judge,

Federal Building,

Juneau, Alaska.

Re: No. 6840-A—Flynn v. Pape, et al.

Dear Judge:

Defendant Pape, so I am informed, is now on a government vessel enroute or on a secret mission to the Far East and will not be back in the States until some time the latter part of January. I am therefore filing a motion that the above case not be tried during December, as it will be impossible for the defendants to go to trial in Pape's absence.

Your very truly,

R. E. ROBERTSON

RER:jp

CC: Faulkner, Banfield & Boochever.

December 7, 1953.

Hon. George W. Folta,  
District Judge,  
Federal Building,  
Anchorage, Alaska.

Re: No. 6840-A—Flynn v. Vevelstad, Pape, et al.

Dear Judge Folta:

Referring to Norman Banfield's letter to you of the 30th ultimo, a copy of which he sent me:

Plaintiff Flynn took Defendant Pape's deposition as an adverse witness, under the Federal Rules of Civil Procedure, in Seattle on September 8th or 9th last, not in October. At the time that Mr. Banfield asked you, on October 2nd last, to set this case for trial on December 14th, I then orally informed you and Mr. Banfield that I understood that Mr. Pape would be absent in the Far East during December and until some time in January, in connection with his service with the Military Sea Transport Service.

Hence, Mr. Banfield then knew that we undoubtedly would not be able to go to trial on December 14th and had something over two months in which to have taken the depositions of his witnesses in New York and elsewhere in the United States.

I personally don't know how much time Mr. Pape spent in Seattle during October and November, but I do know that at the taking of his deposition in Seattle on September 8th or 9th, he told Flynn's attorney that his obligation to answer to Plaintiff's subpoena was a great inconvenience to both him and the military service; in

fact, as I recall, Mr. Ward then apologized to Mr. Pape for having so subpoenaed him.

If Mr. Pape was in Seattle during November, at least commencing on November 18th, 1953, he was aboard a ship of the Military Sea Transport Service and is now serving aboard that ship on a voyage to the Far East, as stated in the enclosed letter of the 3rd instant by the Military Sea Transport Service, signed by L. W. Walters, Director, Industrial Relations Division.

There is no means of obtaining Mr. Pape's return to Juneau by the 14th instant.

Inasmuch as when I was in Ketchikan last week, returning to Juneau today, I understood that you were going to return from Anchorage to Ketchikan, although I did not learn on what date, I am sending a copy of this letter to you in Anchorage, Juneau, and Ketchikan.

Cordially,

R. E. ROBERTSON

encl

RER:jp

CC w/encl: Juneau

Ketchikan

## Exhibit F

# PROOF OF LABOR ON MINING CLAIM

STATE OF WASHINGTON, )  
 ) ss.  
COUNTY OF KING. )

Before me the subscriber personally appeared WILLIAM L. PAPE, Brinnan, Washington, who being first duly sworn on oath, deposes and says: That he has performed labor and made improvements upon the following described mining claims, to-wit: The Hope Nickel Lode Mining Claims numbered 1 to 12 inclusive as recorded in Book 11, pages 152 to 158, the Rita Nickel Lode Mining Claims numbered 1 to 4 inclusive recorded in Book 11, pages 151 to 152, the Sverre Nickel Lode Claim, recorded in Book 11, page 161, situated in the Sitka Mining & Recording District, in S. E. Alaska, during the year ending July 1st, 1952, for and on behalf of the Aurora Nickel Company, the owner of said mining claims, in the sum and value of over \$1700.00, (Seventeen Hundred Dollars), that such labor and improvements consisted of ..... Feet of Shaft, feet of Feet of Tunne, ..... open cuts and repairs of the roads, trails, and buildings on the property, also purchase of tools and materials needed, and extended over seventy days' time and that the same was filed by said William L. Pape.

s/William L. Pape

SUBSCRIBED and SWORN to before me this 8th day  
of July, 1952.

s/Mabel E. Chuts  
Notary Public for Washington.  
Commission expires:  
October 23, 1952.

(SEAL)



UNITED STATES OF AMERICA,) ss. CERTIFICATE  
 TERRITORY OF ALASKA. )

I, FRANK H. B. RICHARDS, the duly appointed, qualified, and acting Commissioner and Ex-Officio Recorder for the Sitka, Alaska, Commissioner's and Recorder's Precinct and District, hereby certify that the foregoing and hereunto attached constitutes a full, true and correct copy of that certain Proof of Labor as it appears of record in Lode Record Book No. 11, on page 204, of the records of said Precinct and District, where it was recorded on July 25, 1952.

IN WITNESS WHEREOF, I have set my hand and official seal this 10th day of December, 1953, in Sitka, Alaska.

FRANK H. B. RICHARDS  
 FRANK H. B. RICHARDS  
 U. S. Commissioner and Ex-Officio  
 Recorder for the Sitka, Alaska,  
 Commissioner's and Recorder's  
 Precinct and District.

## Exhibit H

# AFFIDAVIT OF ANNUAL LABOR

United States of America )  
 ) ss.  
Territory of Alaska )

Before me, the subscriber, personally appeared William L. Pape, who, being duly sworn, saith:

First. That he has personal knowledge of the facts with reference to the annual labor performed and improvements made during the year commencing at 12 o'clock noon, July 1, 1952, upon, or for the benefit of the following named mining claims, Hope Lode Claim 1 to 12 inclusive recorded in Book 11 Pages 152 to 158. The Rita Lode Claims 1 to 4 Recorded in Book 11 Pages 151 to 152. The Svere Lode Claim Record Book 11 Page 161 which said mining claims are located in the Sitka Recording District S. E. Alaska, and are situated as follows:

These mining claims are located on Yakobi Island in the Bohemia Basin and about 2½ miles S. S. West from outflow of Bohemia Creek in Lisiansky Straits.

Second. That during the said year 98 man-days of work were performed and improvements were made upon or for the benefit of the said mining claims, the character and value of which said improvements are as follows:

Clearing and about 700 feet of trenches also the tunnel and trail work.

Total value of improvements: over \$2000

Third. That the said labor was performed and the said improvements were made between the following dates:

From April 24 1953 to June 30 1953.

Fourth. That the said work was done and the said improvements were made at the instance of Aurora Nickel Co. owner.

Fifth. That the actual sum paid for the said work and improvements amounted to \$2,000.00 and that the said amount was paid by William L. Pape.

WILLIAM L. PAPE.

Subscribed and sworn to before me this 3rd day of July, 1953.

R. E. ROBERTSON

Title NOTARY PUBLIC FOR ALASKA

(Notarial Seal) My commission expires June 24, 1957.

UNITED STATES OF AMERICA, )  
 ) ss.  
 TERRITORY OF ALASKA. )

I, Frank H. B. Richards, the duly appointed, qualified, and acting Commissioner and Ex-Officio Recorder for the Sitka Alaska, Commissioner's and Recorder's Precinct and District, hereby certify that the foregoing and hereunto attached constitutes a full, true, and correct copy of that certain Affidavit of Annual Labor as it appears of record in Lode Record Book No. 11, on pages 294-295, of the records of said Precinct and District, where it was recorded on July 6, 1953.

FRANK H. B. RICHARDS

U. S. Commissioner and Ex-Officio  
 Recorder for the Sitka, Alaska,  
 Commissioner's and Recorder's  
 Precinct and District.

## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I, William L. Pape, the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim, by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Rita Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet east side and 300 feet on the west side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges or deposits and surface ground, within the lines of said claim 1500 feet running South from center of discovery; said discovery being situated upon said lode, vein, ledge or deposit; and within the lines of said claim in Sitka Mining District, S. E. Alaska described by metes and bounds as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet E., to a post marked .....; thence 1500 feet S., to a post marked ..... corner (Cor. No. 2); thence 600 feet W., to a post marked ..... corner (Cor. No. 3); thence 1500 feet N., to a post marked .....; thence 300 feet E., to a post marked ..... corner (Cor. No. 4), the place beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a

southerly direction from the center of the Miner Isl. line, distant ..... feet, and 2 miles westerly from mouth of Bohemia Creek and Tidewater.

This claim to be known as the Rita #1.

Discovered 1 October 1950

WILLIAM L. PAPE (SEAL)

Locator

Located 1 October 1950

Filed and recorded on the 4th day of October, 1950; at 10:00 A.M. in Lode Claims Record Book No. 11, at page No. 159, Sitka Precinct, Sitka, Alaska.



## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I, William L. Pape, the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim, by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Rita Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet east side and 300 feet on the west side of the middle of said vein at the surface, so far as can be determined from present development; and all veins, lodes, ledges or deposits and surface ground, within the lines of said claim 1500 feet running north from center of discovery; said discovery being situated upon said lode, vein, ledge or deposit, and within the lines of said claim, in Sitka Mining District, S. E. Alaska described by metes and bounds as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet E., to a post marked 2; thence 1500 feet N., to a post marked 3 corner (Cor. No. 2); thence 600 feet W., to a post marked 4 corner (Cor. No. 3); thence 1500 feet S., to a post marked 5; thence 300 feet E., to a post marked 1 corner, the place beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a southerly direction from the center of the Miner Isl. line,

distant 4 miles and 2 miles westerly from mouth of Bohemia Creek and Tidewater.

This claim to be known as the Rita #2.

Discovered 1 October 1950

WILLIAM L. PAPE (SEAL)

Locator

Located 1 October 1950

Filed and recorded on the 4th day of October, 1950; at 10:00 A.M., in Lode Claims Record Book No. 11, at pages Nos. 159 & 160, in Sitka Precinct, at Sitka, Alaska.

## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I, William L. Pape, the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim, by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Rita Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles, and variations, as allowed by law, together with 300 feet at the surface, so far as can be determined from present developments; and all veins, lodes, ledges or deposits and surface ground, within the lines of said claim 1500 feet running south from center of discovery; said discovery being situated upon said lode, vein, ledge or deposit, and within the lines of said claim, in Sitka Mining District, S. E. Alaska described by metes and bounds as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet E., to a post marked 2; thence 1500 feet S., to a post marked 3 corner (Cor. No. 2); thence 600 feet W., to a post marked 4 corner (Cor. No. 3); thence 1500 feet N., to a post marked 5; thence 300 feet E., to a post marked 1 corner, the place beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a southerly direction from the center of the Miner Isl. line, distant 4 miles and 2 miles westerly from mouth of Bohemia Creek and Tidewater.

This claim to be known as the Rita #3.

Discovered 1 October 1950

WILLIAM L. PAPE (SEAL)

Locator

Located 1 October 1950.

Filed and Recorded on the 4th day of October, 1950; at 10:00 A.M., in Lode Claims Record Book No. 11, at page No. 160, in Sitka Precinct, at Sitka, Alaska.

## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I, William L. Pape the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim, by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Rita Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet east side and 300 feet on the west side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges or deposits and surface ground, within the lines of said claim 1500 feet running north from center of discovery; said discovery being situated upon said lode, vein, ledge or deposit, and within the lines of said claim, in Sitka Mining District, S. E. Alaska described by metes and bounds as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet E., to a post marked 2; thence 1500 feet N., to a post marked 3 corner; thence 600 feet W., to a post marked 4 corner; thence 1500 feet S., to a post marked 5; thence 300 feet E., to a post marked 1 corner, the place of beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a southerly direction from the center of the Miner Isl. line,



distant 4 miles and 2 miles westerly from mouth of Bohemia Creek and Tidewater.

This claim to be known as the Rita #4.

Discovered 1 October 1950

WILLIAM L. PAPE (SEAL)

Locator

Located 1 October 1950

Filed and Recorded on the 4th day of October, 1950; at 10:00 A.M., in Lode Claims Record Book No. 11, at pages Nos. 160 & 161, in Sitka Precinct, at Sitka, Alaska.

## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I, William L. Pape the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim, by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Hope Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet on South side and 300 feet on the North side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges or deposits and surface ground, within the lines of said claim 1500 feet running S. W. from center of discovery and ..... feet running ..... from center of discovery; said discovery being situated upon said lode, vein, ledge or deposit, and with the lines of said claim, in Sitka Mining District, S. E. Alaska described by metes and bounds as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet S. E., to a post marked 2; thence 1500 feet S. W., to a post marked 3 corner; thence 600 feet N. W., to a post marked 4 corner; thence 1500 feet N. E., to a post marked 5; thence 300 feet S. E., to a post marked 1 corner, the place beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a

Southerly Direction from Miner Isl. line, distant 4 miles, and  $2\frac{1}{2}$  miles from mouth of Bohemia creek and Tide-water.

This claim to be known as the Hope #1.

Discovered 1 October 1950

WILLIAM L. PAPE

Locator

Located 1 October 1950

Filed and Recorded on the 4th day of October, 1950; at 10:00 A.M., in Lode Claim Record Book No. 11, at page No. 152, in Sitka Precinct, at Sitka, Alaska.

## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I William L. Pape the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim, by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Hope Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet on South side and 300 feet on the North side of the middle of said vein at the surface, so far as can be determined from present development; and all veins, lodes, ledges or deposits and surface ground, within the lines of said claim 1500 feet running N. E. from center of discovery being situated upon said lode, vein, ledge or deposit, and within the lines of said claims, in Sitka Mining District, S. E. Alaska described by metes and bounds, as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet N. W., to a post marked 2; thence 1500 feet N. E., to a post marked 3 corner; thence 600 feet S. E., to a post marked 4 corner; thence 1500 feet S. W., to a post marked 5; thence 300 feet N. W., to a post marked 1 corner (Cor. No. 1); thence the place beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a

southerly direction from Miner Isl., distant 4 miles and  $2\frac{1}{2}$  miles from mouth of Bohemia Creek and Tidewater.

This claim to be known as the Hope #2.

Discovered 1 October 1950

WILLIAM L. PAPE (SEAL)

Locator

Located 1 October 1950

Filed and Recorded on the 4th day of October, 1950; at 10:00 A.M., in Lode Claims Record Book No. 11, at pages Nos. 152 and 153, in Sitka Precinct, at Sitka, Alaska.



## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I William L. Pape the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim, by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Hope Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet on south side and 300 feet on the north side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges, or deposits and surface ground, within the lines of said claim 1500 feet running S. W. from center of discovery, and being situated upon said lode, vein, ledge or deposit, and within the lines of said claim, in Sitka Mining District, S. E. Alaska described by metes and bounds as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet S. E., to a post marked 2; thence 1500 feet S. W., to a post marked 3 corner (Cor. No. 2); thence 600 feet N. W., to a post marked 4 corner (Cor. No. 3); thence 1500 feet N. E., to a post marked 5; thence 300 feet S. E., to a post marked 1 corner (Cor. No. 4); the place beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a .....

direction from the center of Miner Isl. line, distant 4 miles, and  $2\frac{1}{2}$  miles from mouth of Bohemia Creek and Tidewater.

This claim to be known as the .....

Discovered 1 October 1950

WILLIAM L. PAPE (SEAL)

Located 1 October 1950

Filed and Recorded on the 4th day of October, 1950; at 10:00 A.M., in Lode Claims Record Book No. 11, at page No. 153, in Sitka Precinct, at Sitka, Alaska.

## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I William L. Pape the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim, by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Hope Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet on south side and 300 feet on the north side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges or deposits and surface ground, within the lines of said claim 1500 feet running N. E. from center of discovery; said discovery being situated upon said claim, in Sitka Mining District, S. E. Alaska described by metes and bounds as follows to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet N. W., to a post marked 2; thence 1500 feet N. E., to a post marked 3 corner (Cor. No. 2); thence 600 feet S. E., to a post marked 4 corner (Cor. No. 3); thence 1500 feet S.W., to a post marked 5; thence 300 feet N. W., to a post marked 1 corner, the place beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a southerly direction from the center of the Miner Isl. line,

distant  $4\frac{1}{2}$  miles. and  $2\frac{1}{2}$  miles from mouth of Bohemia Creek and Tidewater.

This claim to be known as the Hope #4.

Discovered 1 October 1950

WILLIAM L. PAPE (SEAL)

Located 1 October 1950

Filed and Recorded on the 4th day of October, 1950; at 10:00 A.M., in Lode Claims Record Book No. 11, at page No. 154, in Sitka precinct, at Sitka, Alaska.

## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I William L. Pape the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 lineal feet and horizontal measurement on the Hope Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet on south side and 300 feet on the north side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges or deposits and surface ground, with the lines of said claim 1500 feet running S. W. from center of discovery; said discovery being situated upon said lode, vein, ledge or deposit, and within the lines of said claim, in Sitka Mining District, S. E. Alaska described by metes and bounds as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet S. E., to a post marked 2; thence 1500 feet S. W., to a post marked 3 corner (Cor. No. 2); thence 600 feet N. W. to a post marked 4 corner (Cor. No. 3); thence 1500 feet N. E., to a post marked 5; thence 300 feet S. E., to a post marked 1 corner (Cor. No. 4); thence the place beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a south-



erly direction from the center of the Miner Isl. line, distant  $4\frac{1}{2}$  miles. and  $2\frac{1}{2}$  miles from mouth of Bohemia Creek and Tidewater.

This claim to be known as the Hope #5

Discovered 1 October 1950

WILLIAM L. PAPE (SEAL)

Locator

Located 1 October 1950

Filed and Recorded on the 4th day of October, 1950; at 10:00 A.M., in the Lode Claims Record Book No. 11, at pages No. 154 & 155, in Sitka Precinct, at Sitka, Alaska.

## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I William L. Pape the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents do locate and claim, by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Hope Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet on south side and 300 feet on the north side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges or deposits and surface ground, within the lines of said claim 1500 feet running N. E. from center of discovery; said discovery being situated upon said lode, vein, ledge or deposit, and within the lines of said claim, in Sitka Mining District S. E. Alaska, described by metes and bounds as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet N. W., to a post marked 2, thence 1500 feet N. E., to a post marked 3 corner (Cor. No. 2); thence 600 feet S. E., to a post marked 4 corner (Cor. No. 3); thence 1500 feet S. W., to a post marked 5; thence 300 feet N. W., to a post marked 1 corner, the place beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a

southerly direction from the center of the Miner Isl. line, distant  $4\frac{1}{2}$  miles and  $2\frac{1}{2}$  miles from mouth of Bohemia Creek and Tidewater.

This claim to be known as the Hope #6.

Discovered 1 October 1950

WILLIAM L. PAPE (SEAL)

Locator

Located 1 October 1950

Filed and Recorded on the 4th day of October, 1950; at 10:00 A.M., in Lode Claims Record Book No. 11 at page No. 155, in Sitka Precinct, at Sitka, Alaska.

## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I, William L. Pape, the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim, by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Hope Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet on the east side and 300 feet on the west side of the middle of said vein at the surface, so far as can be determined from present development; and all veins, lodes, ledges or deposits and surface ground, within the lines of said claim 1500 feet running N. E. from center of discovery; said discovery being situated upon said lode, vein, ledge or deposit, and within the lines of said claim, in Sitka Mining District, S. E. Alaska described by metes and bounds as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet S. E., to a post marked 2, thence 1500 feet S. W., to a post marked 3 corner (Corner No. 2); thence 600 feet N.W., to a post marked 4 corner (Cor. No. 3); thence 1500 feet N. E., to a post marked 5; thence 300 feet S.E., to a post marked 1 corner; the place beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a south-

erly direction from the center of the Miner Isl. line, distant 4 miles, and 6500 ft. westerly direction from mouth of Bohemia Creek and Tidewater.

This claim to be known as the Hope #7.

Discovered 1 October 1950

WILLIAM L. PAPE (SEAL)

Located 1 October 1950

Filed and Recorded on the 4th day of October, 1950; at 10:00 A.M., in Lode Claims Record Book No. 11, at pages Nos. 155 & 156, in Sitka Precinct, at Sitka, Alaska.



## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I, William L. Pape, the undersigned Citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim, by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Hope Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet on east side and 300 feet on the West side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges or deposits and surface ground, within the lines of said claim 1500 feet running S. W. from center of discovery; said discovery being situated upon said lode, vein, ledge or deposit, and within the lines of said claim, in Sitka Mining District, S. E. Alaska described by metes and bounds as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet N. W., to a post marked 2; thence 1500 feet N.E., to a post marked 3 corner (Cor. No. 2); thence 600 feet S. E., to a post marked 4 corner (Cor. No. 3); thence 1500 feet S. W., to a post marked 5; thence 300 feet N. E., to a post marked 1 corner, the place beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a

southerly direction from the center of the Miner Isl. line, distant 4 miles, and 6500 ft. westerly direction from mouth of Bohemia Creek and Tidewater.

This claim to be known as the Hope #8.

Discovered 1 October 1950

WILLIAM L. PAPE (SEAL)

Locator

Located 1 October 1950

Filed and Recorded on the 4th day of October, 1950; at 10:00 A.M., in Lode Claims Record Book No. 11, at page No. 156, in Sitka Precinct, at Sitka, Alaska.

## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I, William L. Pape, the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim, by right of discovery, and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Hope Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet east side and 300 feet on the west side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges or deposits and surface ground, within the lines of said claim 1500 feet running S. W. from center of discovery; said discovery being situated upon said lode, vein, ledge or deposit, and within the lines of said claim, in Sitka Mining District, S. E. Alaska, described by metes and bounds as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet S. E., to a post marked 2; thence 1500 feet S. W., to a post marked 3 corner (Cor. No. 2); thence 600 feet N. W., to a post marked 4 (Cor. No. 3); thence 1500 feet N. E., to a post marked 5; thence 300 feet S. E., to a post marked 1 corner (Cor. No. 4); the place beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a southerly direction from the center of the Miner Isl. line, distant 4 miles, and 6500 ft. westerly direction from mouth of Bohemia Creek and Tidewater.

This claim to be known as the Hope #9.

Discovered 1 October 1950

WILLIAM L. PAPE      (SEAL)  
Locator

Located 1 October 1950

Filed and Recorded on the 4th day of October, 1950; at 10:00 A.M., in Lode Claims record book No. 11, at pages Nos. 156 & 157, in the Sitka Precinct, at Sitka, Alaska.

## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I, William L. Pape, the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim, by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Hope Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet west side and 300 feet on the east side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges or deposits and surface ground, within the lines of said claim 1500 feet running N. E. from center of discovery; said discovery being situated upon said lode, vein, ledge or deposit, and within the lines of said claim, in Sitka Mining District, S. E. Alaska, described by metes and bounds as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet N. E., to a post marked 2; thence 1500 feet N. E., to a post marked 3 corner (Cor. No. 2); thence 600 feet S. E., to a post marked 4 corner (Cor. No. 3); thence 1500 feet S. W., to a post marked 5; thence 300 feet N. W., to a post marked 1 corner, the place beginning.



This claim is further described as follows: The point of discovery upon which this notice is posted is in a southerly direction from the center of the Miner Isl. line, distant 4 miles and 6500 ft. westerly direction from mouth of Bohemia Creek and Tidewater.

This claim to be known as the Hope #10.

Discovered 1 October 1950

WILLIAM L. PAPE (SEAL)  
Locator.

Located 1 October 1950.

Filed and Recorded on the 4th day of October, 1950, at 10:00 A.M., in Lode Claim Record Book No. 11, at page No. 157, in Sitka Precinct, at Sitka, Alaska.

## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I William L. Pape the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim, by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Hope Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet west side and 300 feet on the east side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges or deposits and surface ground, within the lines of said claim 1500 feet running S. W. from center of discovery; said discovery being situated upon said lode, vein, ledge or deposit; and within the lines of the said claim, in Sitka mining district, S. E. Alaska, described by metes and bounds as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet S. E., to a post marked 2; thence 1500 feet S. W., to a post marked 3 corner; thence 600 feet N. W., to a post marked 4 corner; thence 1500 feet N. E., to a post marked 5; thence 300 feet S. E., to a post marked 1 corner, the place beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a

southerly direction from the center of the Miner Isl. line, distant 4 miles and 6500 ft. westerly from mouth of Bohemia Creek and Tidewater.

This claim to be known as the Hope #11.

Discovered 1 October 1950

WILLIAM L. PAPE (SEAL)

Locator.

Located 1 October 1950.

Filed and Recorded on the 4th day of October, 1950; at 10:00 A.M., in Lode Claims Record Book No. 11, at page Nos. 157 & 158, in Sitka Precinct, at Sitka, Alaska.

## Exhibit E

## LOCATION NOTICE

KNOW ALL MEN BY THESE PRESENTS That I, William L. Pape the undersigned citizen of the United States, has this first day of October 1950, located and claimed, and by these presents does locate and claim, by right of discovery and location, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent Acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Hope Nickel lode, vein, ledge or deposit along the vein thereof, with all its dips, angles and variations, as allowed by law, together with 300 feet east side and 300 feet on the west side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges or deposits and surface ground, within the lines of said claim 1500 feet running N. E. from center of discovery; said discovery being situated upon said lode, vein, ledge or deposit, and within the lines of said claim, in Sitka Mining District, S. E. Alaska described by metes and bounds as follows, to-wit:

BEGINNING at Cor. No. 1 (the discovery corner), running thence 300 feet N. W., to a post marked 2; thence 1500 feet N. E., to a post marked 3 corner; thence 600 feet S. E., to a post marked 4 corner; thence 1500 feet S. W., to a post marked 5; thence 300 feet N. W., to a post marked 1; corner, the place beginning.

This claim is further described as follows: The point of discovery upon which this notice is posted is in a

southerly direction from the center of the Miner Isl. line, distant 4 miles and 6500 ft. westerly from mouth of Bohemia Creek and Tidewater.

This claim to be known as the Hope #12.

Discovered 1 October 1950

WILLIAM L. PAPE (SEAL)

Locator.

Located 1 October 1950.

Filed and Recorded on the 4th day of October, 1950; at 10:00 A.M., in Lode Claims Record Book No. 11, at page No. 158, in Sitka Precinct, at Sitka, Alaska.



## Exhibit E

CERTIFICATE OF LOCATION  
LODE CLAIM

Notice is hereby given that the undersigned has located and claims by right of discovery a quartz or lode claim 1500 feet in length by 600 feet in width, along the Hope Nickel lode or vein situate on Yacobi Isl., Bohemia Basin, S. E. Alaska together with all the dips, variations, spurs, and angles, and all veins, lodes, ledges and deposits, the tops or apices of which are within the lines thereof, together with all surface ground embraced within the said lines, said claim being 1500 feet in length and 300 feet on each side of the center of said vein or lode, and is particularly described as follows, to-wit:

- (1) The name of said claim shall be the SVERE claim.
- (2) The name-s of the Locators thereof is-are William L. Pape.
- (3) The date of discovery and location thereof is first day of October, 1950.
- (4) The discovery post or stake is situate  $3\frac{1}{2}$  miles in a southerly direction from Miner Isl. and 2 miles in a westerly direction from mouth of Bohemia Creek and tidewater, and said claim is marked upon the ground by substantial posts, stakes, and monuments, as prescribed by law, and is described as follows: Commencing at the discovery stake; running thence in an easterly direction 300 feet to post No. 1; thence in a northerly direction 1500 feet to post No. 2; thence in a westerly direction 600 feet to post No. 3; thence in a southerly direction 1500

feet to post No. 4; thence in an easterly direction 300 feet to post discovery No. 1.

The center end lines of said claim are cut, blazed, and marked with posts or monuments, so that the same can be readily traced.

Dated 1 October, 1950.

WILLIAM L. PAPE

Locator.

Filed and Recorded on the 4th day of October, 1950; at 10:00 A.M., in Lode Claims Record Book No. 11, at page No. 161, in Sitka Precinct, at Sitka, Alaska.

## Exhibit I

## LOCATION CERTIFICATE

Territory of Alaska ) ss.

## KNOW ALL MEN BY THESE PRESENTS

That we, the undersigned, a corporation has this 1 day of July 1952, located, and claimed, and by these presents does locate, and claim, by right of discovery and location certificate in compliance with the mining acts of Congress, approved May 10, 1872, and with all subsequent acts, and in compliance with the mining laws of the statutes of the Territory of Alaska, and with local customs, laws and regulations, 1500 linear feet, horizontal measurements, on the Hope Nickel lode, vein, ledge, or deposits, along the vein thereof, with all its dips, angles, spurs, and variations, as allowed by law, together with 300 feet on the westerly side and 300 feet on the easterly side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, spurs, or deposits, and surface grounds within the lines of said location ..... feet running ..... from center of discovery ..... and ..... feet running ..... from center of discovery, said discovery being situated upon said lode, vein, ledge, or deposit, and within the lines of said location, in the Sitka mining district, Yacobi Isl. Territory of Alaska described by metes and bounds as follows, to-wit:

Beginning at corner No. 1, thence in a westerly direction 300 feet to Post #2; thence Southerly 1500 feet to corner No. 3, thence easterly 600 feet to corner No. 4, thence northerly 1500 feet to corner No. 5, thence wes-

terly 300 feet to corner No. 1, the place of beginning. And further, the ..... line of this location joins and overlaps ..... feet on the ..... of the ..... group locations.

The name of this location is Doris #1.

Said lode was discovered the 1 day of July A. D., 1952.

Post #1 is located 4.4 miles southerly from Rock point light and 2.8 miles southwesterly from north side entrance of Stag Bay.

Witnesses:

Locator:

EARL LARSEN

AURORA NICKEL COMPANY

HAROLD R. JONES

By W. L. PAPE

V.P.

Filed and Recorded on the 25th day of July, 1952; at 11:45 A. M., in Lode Claims Record Book No. 11, at page No. 201, in Sitka Precinct, at Sitka, Alaska.

## Exhibit I

## LOCATION CERTIFICATE

Territory of Alaska ) ss.

## KNOW ALL MEN BY THESE PRESENTS

That we, the undersigned, a corporation has this 1st day of July 1952, located, and claimed, and by these presents does locate, and claim, by right of discovery and location certificate in compliance with the mining acts of Congress, approved May 10, 1872, and with all subsequent acts, and in compliance with the mining laws of the statutes of the Territory of Alaska, and with local customs, laws and regulations, 1500 linear feet, horizontal measurements, on the Hope Nickel lode, vein, ledge, or deposits, along the vein thereof, with all its dips, angles, spurs, and variations, as allowed by law, together with 300 feet on the West side and 300 feet on the East side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, spurs, or deposits, and surface grounds within the lines of said location ..... feet running ..... from center of discovery ..... and ..... feet running ..... from center of discovery, said discovery being situated upon said lode, vein, ledge, or deposit, and within the lines of said location, in the Sitka mining district, Yakobi Island and Territory of Alaska described by metes and bounds as follows, to-wit:

Beginning at corner No. 1, whence the in a westerly direction 300 feet to Post #2; thence Northerly 1500 feet to corner No. 3, thence Easterly 600 feet to corner No. 4, thence Southerly 1500 feet to corner No. 5, thence Wes-



terly 300 feet to corner No. 1, the place of beginning. And further, the ..... line of this location ..... joins and overlaps ..... feet on the ..... of the ..... group of locations.

The name of this location is Doris #2.

Said lode was discovered the 1st day of July A. D., 1952.

Post #1 is located 4.4 miles Southerly from Rock Point Light and 2.8 miles South Westerly from North side entrance of Stag Bay.

Witness:

Locator:

EARL LARSEN

AURORA NICKEL COMPANY

HAROLD R. JONES

By W. L. PAPE

V.P.

Filed and Recorded on the 25th day of July, 1952; at 11:45 A.M., in Lode Mining Claims Record Book No. 11, at page No. 201 & 202, in Sitka precinct, at Sitka, Alaska.

## Exhibit I

## LOCATION CERTIFICATE

Territory of Alaska ) ss.

## KNOW ALL MEN BY THESE PRESENTS

That we, the undersigned, a corporation has this 1st day of July 1952, located, and claimed, and by these presents does locate, and claim, by right of discovery and location certificate in compliance with the mining acts of Congress, approved May 10, 1872, and with all subsequent acts, and in compliance with the mining laws of the statutes of the Territory of Alaska, and with local customs, laws and regulations, 1500 linear feet, horizontal measurements, on the Hope Nickel lode, vein, ledge, or deposits, along the vein thereof, with all its dips, angles, spurs, and variations, as allowed by law, together with 300 feet on the westerly side and 300 feet on the easterly side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, spurs, or deposits, and surface grounds within the lines of said location ..... feet running ..... from center of discovery ..... and ..... feet running ..... from center of discovery ....., said discovery ..... being situated upon said lode, vein, ledge, or deposits, and within the lines of said location, in the ..... Sitka Mining district, Yakobi Island and Territory of Alaska described by metes and bounds as follows, to-wit:

Beginning at corner No. 1, whence the in a westerly direction 300 feet to post #2 thence Southerly 1500 feet to corner No. 3, thence Easterly 600 feet to corner No. 4 thence Northerly 1500 feet to corner No. 5, thence Wes

terly 300 feet to corner No. 1, the place of beginning, and further, the ..... line of this location ..... joins and overlaps ..... feet on the ..... of the ..... group locations.

The name of this location is Doris #3.

Said lode was discovered the 1st day of July A. D., 1952.

Post #1 is located 4.4 miles Southerly from Rock Point Light and 2.8 miles South Westerly from North Side entrance of Stag Bay.

Witness:

Locator:

EARL LARSEN

AURORA NICKEL COMPANY

HAROLD R. JONES

By W. L. PAPE

V.P.

Filed and Recorded on the 25th day of July, 1952; at 11:45 A. M., in Lode Claims Record Book No. 11, at page No. 202, in Sitka Precinct, at Sitka, Alaska.

## Exhibit I

## LOCATION CERTIFICATE

Territory of Alaska ) ss.

## KNOW ALL MEN BY THESE PRESENTS

That we, the undersigned, a corporation has this 1 day of July 1952, located, and claimed, and by these presents does locate, and claim, by right of discovery and location certificate in compliance with the mining acts of Congress, approved May 10, 1872, and with all subsequent acts, and in compliance with the mining laws of the statutes of the Territory of Alaska, and with local customs, laws and regulations, 1500 linear feet, horizontal measurements, on the Hope Nickel lode, vein, ledge, or deposit, along the vein thereof, with all its dips, angles, spurs, and variations, as allowed by law, together with 300 feet on the west side and 300 feet on the east side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, spurs, or deposits, and surface grounds within the lines of said location ..... feet running ..... from center of discovery ..... and ..... feet running ..... from center of discovery ....., said discovery ..... being situated upon said lode, vein, ledge, or deposit, and within the lines of said location, in the Sitka Mining district, Yacobi Territory of Alaska described by metes and bounds as follows, to-wit:

Beginning at corner No. 1, whence the in a westerly direction 300 feet to Post #2 thence Northerly 1500 feet to corner No. 3, thence Easterly 600 feet to corner No. 4, thence Southerly 1500 feet to corner No. 5, thence Wes-

terly 300 feet to corner No. 1, the place of beginning. And further, the ..... line of this location ..... joins and overlaps ..... feet on the ..... of the ..... group locations.

The name of this location is Doris #4.

Said lode was discovered the 1 day of July A. D., 1952.

Post #1 is located 4.4 miles Southerly from Rock Point Light and 2.8 miles South Westerly from North side entrance of Stag Bay.

Witness:

Locator:

EARL LARSEN

AURORA NICKEL COMPANY

HAROLD R. JONES

By W. L. PAPE

V.P.

Filed and Recorded on the 25th day of July, 1952; at 11:45 A. M., in Lode Claims Record Book No. 11, at page No. 203, in Sitka Precinct, at Sitka, Alaska.



## Exhibit I

## LOCATION CERTIFICATE

Territory of Alaska ) ss.

## KNOW ALL MEN BY THESE PRESENTS

That we, the undersigned, a corporation has this 1 day of July 1952, located, and claimed, and by these presents does locate, and claim, by right of discovery and location certificate in compliance with the mining acts of Congress, approved May 10, 1872, and with all subsequent acts, and in compliance with the mining laws of the statutes of the Territory of Alaska, and with local customs, laws and regulations, 1500 linear feet, horizontal measurements, on the Hope Nickel lode, vein, ledge, or deposits, along the vein thereof, with all its dips, angles, spurs, and variations, as allowed by law, together with 300 feet on the westerly side and 300 feet on the easterly side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, spurs, or deposits, and surface grounds within the lines of said location ..... feet running ..... from center of discovery ..... and ..... feet running ..... from center of discovery, ..... said discovery ..... being situated upon said lode, vein, ledge, or deposits, and within the lines of said location, in the Sitka mining district county of and Territory of Alaska described by metes and bounds as follows, to-wit:

Beginning at corner No. 1, whence the in a westerly direction 300 feet to post #2; thence Southerly 1500 feet to corner No. 3, thence easterly 600 feet to corner No. 4, thence northerly 1500 feet to corner No. 5, thence westerly

300 feet to corner No. 1, the place of beginning. And further, the ..... line of this location ..... joins and overlaps ..... feet on the ..... of the..... group locations.

The name of this location is Svere #2.

Said lode was discovered the first day of July A. D., 1952.

Post #1 is located 4.7 miles in a southerly direction from Miner Isl. and 2 miles in a westerly direction from the mouth of Bohemia Creek.

Witness:

Locator:

EARL LARSEN

AURORA NICKEL COMPANY

FRED S. JONES

By W.L. PAPE

V.P.

Filed and Recorded on the 25th day of July, 1952; at 11:45 A. M., in Lode Claims Record Book No. 11, at page No. 198, in Sitka Precinct, at Sitka, Alaska.

## Exhibit I

## LOCATION CERTIFICATE

Territory of Alaska ) ss.

## KNOW ALL MEN BY THESE PRESENTS

That we, the undersigned, a corporation has this 1 day of July 1952, located, and claimed, and by these presents does locate, and claim, by right of discovery and location certificate in compliance with the mining acts of Congress, approved May 10, 1872, and with all subsequent acts, and in compliance with the mining laws of the statutes of the Territory of Alaska, and with local customs laws and regulations, 1500 linear feet, horizontal measurements, on the nickel-iron lode, vein, ledge, or deposits, along the vein thereof, with all its dips, angles, spurs, and variations, as allowed by law, together with 300 feet on the north side and 300 feet on the south side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, spurs, or deposits, and surface grounds within the lines of said location ..... feet running from center of discovery ..... and ..... feet running ..... from center of discovery ....., said discovery ..... being situated upon said lode, vein, ledge, or deposit, and within the lines of said location, in the ..... mining district, county of ..... State of ..... described by metes and bounds as follows, to-wit:

Beginning at Corner No. 1, whence the 300 feet in a northerly direction to Post #2; thence westerly 1500 feet to corner No. 3, thence southerly 600 feet to corner No. 4, thence easterly 1500 feet to corner No. 5, thence northerly 300 feet to corner No. 1, the place of beginning.

And further, the ..... line of this location ....., joins and overlaps ..... feet on the ..... of the ..... group locations.

The name of this location is Takanis #1.

Said lode, was discovered the 1 day of July A. D., 1952.

The location of Post #1 is southerly 5.7 miles from Rock Point light and northeasterly 4 miles from north side entrance of Stag Bay.

Witness:

Locator:

EARL LARSEN

AURORA NICKEL COMPANY

LELAND BESEL

By W. L. PAPE

Filed and Recorded on the 25th day of July, 1952; at 11:45 A.M., in Lode Claims Record Book No. 11, at pages Nos. 197 & 198, in Sitka Precinct, at Sitka, Alaska.

## Exhibit I

## LOCATION CERTIFICATE

Territory of Alaska ) ss.

## KNOW ALL MEN BY THESE PRESENTS

That we, the undersigned, a corporation has this 1 day of July 1952, located, and claimed, and by these presents does locate, and claim, by right of discovery and location certificate in compliance with the mining acts of Congress, approved May 10, 1872, and with all subsequent acts, and in compliance with the mining laws of the statutes of the Territory of Alaska, and with local customs, laws and regulations, 1500 linear feet, horizontal measurements, on the nickel-iron lode, vein, ledge, or deposits, along the vein thereof, with all its dips, angles, spurs, and variations, as allowed by law, together with 300 feet on the north side and 300 feet on the south side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, spurs, or deposits, and surface grounds within the lines of said location ..... feet running ..... from center of discovery ..... and ..... feet running ..... from center of discovery ....., said discovery ..... being situated upon said lode, vein, ledge, or deposit, and within the lines of said location, in the Sitka mining district, county of ..... and Territory of Alaska described by metes and bounds as follows, to-wit:

Beginning at corner No. 1, whence the in a northerly direction 300 feet to corner post #2; thence Westerly 1500 feet to corner No. 3, thence Southerly 600 feet to corner No. 4, thence Easterly 1500 feet to corner No. 5,



thence northerly 300 feet to corner No. 1, the place of beginning. And further, the ..... line of this location ..... joins and overlaps ..... feet on the ..... of the ..... group locations.

The name of this location is Beach #1.

Said lode was discovered the 1s day of July A. D., 1952.

Post #1 is located 2600 yards South of Rock Point Light and 50 yards South-west of the mouth of Bohemia Creek.

Witness:

Locator:

EARL LARSEN

AURORA NICKEL COMPANY

LELAND BESEL

By W. L. PAPE V. P.

Filed and Recorded on the 25th day of July, 1952; at 11:45 A.M., in Lode Claims Record Book No. 11, at page No. 200, in Sitka Precinct, at Sitka, Alaska.

## Exhibit I

## LOCATION CERTIFICATE

Territory of Alaska ) ss.

## KNOW ALL MEN BY THESE PRESENTS

That we, the undersigned, a corporation has this 1 day of July 1952, located, and claimed, and by these presents does locate, and claim, by right of discovery and location certificate in compliance with the mining acts of Congress, approved May 10, 1872, and with all subsequent acts, and in compliance with the mining laws of the statutes of the Territory of Alaska, and with local customs, laws and regulations, 1500 linear feet, horizontal measurements, on the nickel-iron lode, vein, ledge, or deposits, along the vein thereof, with all its dips, angles, spurs, and variations, as allowed by law, together with 300 feet on the south side and 300 feet on the north side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, spurs, or deposits, and surface grounds within the lines of said location ..... feet running ..... from center of discovery ..... and ..... feet running ..... from center of discovery ....., said discovery ..... being situated upon said lode, vein, ledge, or deposit, and within the lines of said location, in the Sitka mining district, county of ..... Territory of Alaska described by metes and bounds as follows, to-wit:

Beginning at corner No. 1, whence the in a northerly direction 300 feet to corner post #2; thence Westerly 1500 feet to corner No. 3, thence Southerly 600 feet to corner No. 4, thence Easterly 1500 feet to corner No. 5,

thence Northerly 300 feet to corner No. 1, the place of beginning. And further, the ..... line of this location ..... joins and overlaps ..... feet on the ..... of the ..... group locations.

The name of this location is Beach #2.

Said lode was discovered the 1 day of July A. D., 1952.

Post #1 is located 2800 yards South of Rock Point Light and 250 yards South-west of the mouth of Bohemia Creek.

Witness:

Locator:

EARL LARSEN

AURORA NICKEL COMPANY

LELAND BESEL

By W. L. PAPE V. P.

Filed and Recorded on the 25th day of July, 1952; at 11:45 A.M., in Lode Claims Record Book No. 11, at pages Nos. 199 & 200, in Sitka Precinct, at Sitka, Alaska.

## Exhibit I

## LOCATION CERTIFICATE

Territory of Alaska ) ss.

## KNOW ALL MEN BY THESE PRESENTS

That we, the undersigned, a corporation has this 1 day of July 1952, located, and claimed, and by these presents does locate, and claim, by right of discovery and location certificate in compliance with the mining acts of Congress, approved May 10, 1872, and with all subsequent acts, and in compliance with the mining laws of the statutes of the Territory of Alaska, and with local customs, laws and regulations, 1500 linear feet, horizontal measurements, on the nickel-iron lode, vein, ledge, or deposits, along the vein thereof, with all its dips, angles, spurs, and variations, as allowed by law, together with 300 feet on the south side and 300 feet on the north side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, spurs, or deposits, and surface grounds within the lines of said location ..... feet running ..... from center of discovery ..... and ..... feet running ..... from center of discovery ....., said discovery ..... being situated upon said lode, vein, ledge, or deposit, and within the lines of said location, in the Sitka mining district, county of ..... and Territory of Alaska, described by metes and bounds as follows, to-wit:

Beginning at corner No. 1, whence the in a northerly direction 300 feet to corner Post #2; thence Westerly 1500 feet to corner No. 3, thence Southerly 600 feet to corner No. 4, thence Easterly 1500 feet to corner No. 5,

thence Northerly 300 feet to corner No. 1, the place of beginning. And further, the ..... line of this location ..... joins and overlaps ..... feet on the ..... of the ..... group locations.

The name of this location is Beach #3.

Said lode was discovered the 1 day of July A. D., 1952.

Post #1 is located 3000 yards south of Rock Point Light and 450 yards southwest of the mouth of Bohemia Creek.

Witness:

Locator:

EARL LARSEN

AURORA NICKEL COMPANY

LELAND BESEL

By W. L. PAPE V. P.

Filed and Recorded on the 25th day of July, 1952; at 11:45 A.M., in Lode Claims Record Book No. 11, at page No. 199, in Sitka Precinct, at Sitka, Alaska.



From Exhibit 2

LODE CLAIM

Notice of Location

of the Mayflower No. 2 Mining Claim.

Notice is hereby given that the undersigned, having complied with all the requirements of the Laws of the United States, and the local laws, customs and regulations has this 27th day of October A. D. 1952 discovered, located and claimed 1500 linear feet, horizontal measurement of, on and along the lode or vein of quartz or other rock in place bearing gold, silver, copper, lead or other metals, with 300 feet of surface ground on each side of the center line of said claim; together with all dips, spurs, angles, and variations as allowed by law; and all veins, lodes, deposits, and ground within the lines of said claim; situated in the Sitka mining district, Territory of Alaska. The general course of said vein or deposit as nearly as can, at this time, be determined is North-West and South-East. This claim extends 1500 feet North-West and 0.0 feet from the discovery monument on which this notice is posted, along the course of said center line of said claim. Said claim is more particularly described as follows:

Mayflower No. 2 claim is situated in Bohemia Basin, on the east side of Yakobi Island, Alaska, and it adjoins Mayflower No. 5 and Portia No. 1 claims. It is about 3000 ft. North-West of Bohemia Basin Camp.

Witnesses:

s/ E. Norppa

s/ E. M. Flynn

s/ S. S. Maki

Locators and claimants.

## UNITED STATES, DISTRICT OF ALASKA.

Division No. 1 Sitka Precinct No. 4 ss.

Frank H. B. Richards, commissioner and Ex-Officio Recorder for the Recording District of Sitka, No. 4, do hereby certify that the within and foregoing instrument of writing was filed for record in my office on the 4 day of Nov A.D. 1952 at 30 minutes past 11 o'clock A.M. and duly recorded in the Lode Record Book No. 11 on page 222 the records of the Recording District of Sitka, No. 4 Division No. 1, Territory of Alaska.

Attest s/ Frank H. B. Richards

Commissioner and Ex Officio Recorder.

From Exhibit 2

## LODE CLAIM

## Notice of Location

of the Portia No. 3 Mining Claim.

Notice is hereby given that the undersigned, having complied with all the requirements of the Laws of the United States, and the local laws, customs and regulations has this 29th day of October A. D. 1952 discovered, located and claimed 1500 linear feet, horizontal measurement of, on and along the lode or vein of quartz or other rock in place bearing gold, silver, copper, lead or other metals, with 300 feet of surface ground on each side of the center line of said claim; together with all dips, spurs, angles, and variations as allowed by law; and all veins, lodes, deposits, and ground within the lines of said claim; situated in the Sitka mining district, Territory of Alaska. The general course of said vein or deposit as nearly as can, at this time, be determined is North-East and South-West. This claim extends 1500 feet South-West and 0.0 feet ..... from the discovery monument on which this notice is posted, along the course of said center line of said claim. Said claim is more particularly described as follows:

Portia No. 3 claim is situated in Bohemia Basin, on the east side of Yakobi Island, Alaska, and it adjoins Yakobi No. 5 and Portia No. 4 claims. It is about 1500 ft. West of Bohemia Basin Camp.

Witnesses:

s/ E. Norppa

s/ S. S. Maki

s/ E. M. Flynn

Locators and claimants.

## UNITED STATES, DISTRICT OF ALASKA.

Division No. 1 Sitka Precinct No. 4 ss.

Frank H. B. Richards, commissioner and Ex-Officio Recorder for the Recording District of Sitka, No. 4, do hereby certify that the within and foregoing instrument of writing was filed for record in my office on the 4 day of Nov A.D. 1952 at 30 minutes past 11 o'clock A.M. and duly recorded in the Lode Record Book No. 11 on page 219 the records of the Recording District of Sitka, No. 4, Division No. 1, Territory of Alaska.

Attest s/ Frank H. B. Richards

Commissioner and Ex Officio Recorder.

From Exhibit 3

LODE CLAIM

Notice of Location

of the Pelican No. 26 Mining Claim.

Notice is hereby given that the undersigned, having complied with all the requirements of the Laws of the United States, and the local laws, customs and regulations has this 24th day of November A. D. 1952, discovered, located and claimed 1500 linear feet, horizontal measurement of, on and along the lode or vein of quartz or other rock in place bearing gold, silver, copper, lead or other metals, with 300 feet of surface ground on each side of the center line of said claim; together with all dips, spurs, angles, and variations as allowed by law; and all veins, lodes, deposits, and ground within the lines of said claim; situated in the Sitka mining district, Territory of Alaska. The general course of said vein or deposit as nearly as can, at this time, be determined is north-west and south-east. This claim extends 1500 feet south-east and 0.0 feet from the discovery monument on which this notice is posted, along the course of said center line of said claim. Said claim is more particularly described as follows:

Pelican No. 26 Mining Claim is situated in the Bohemia Basin, on the east side of Yakobi Island, Alaska, and adjoins Pelican No. 25 and Pelican No. 27. It is about 7800 feet north-east of Bohemia Basin Camp.

Witnesses:

s/ E. Norppa

s/ S. S. Maki

s/ E. M. Flynn

Locator and Claimant.



Filed and Recorded on the 1st of December, 1952; at 1:55 P.M. Frank H. B. Richards, Ex Officio Recorder, Sitka Precinct.

UNITED STATES OF AMERICA,  
TERRITORY OF ALASKA,  
SITKA RECORDING PRECINCT. ss.

I HEREBY CERTIFY that the foregoing and attached is a full, true and correct copy of the original recording thereof, on file and of record in my office.

Witness my hand and the official seal of my office, this the 7th day of July, 1953, at Sitka, Alaska.

FRANK H. B. RICHARDS

Frank H. B. Richards,  
U. S. COMMISSIONER and  
Ex Officio Recorder for the  
Precinct of Sitka.

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“Rule 10 (c): Adoption by Reference. Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.”

1. The first part of the paper is devoted to a general discussion of the problem of the origin of life. It is shown that the problem is one of the most important and most difficult in the history of science.

2. The second part of the paper is devoted to a detailed discussion of the various theories of the origin of life. It is shown that the most plausible theory is the theory of spontaneous generation.

3. The third part of the paper is devoted to a discussion of the evidence in favor of the theory of spontaneous generation. It is shown that the evidence is very strong and that the theory is well supported by the facts.

4. The fourth part of the paper is devoted to a discussion of the objections to the theory of spontaneous generation. It is shown that the objections are not valid and that the theory is still the best explanation of the facts.

5. The fifth part of the paper is devoted to a discussion of the implications of the theory of spontaneous generation. It is shown that the theory has important implications for our understanding of the origin of life and for the history of science.

6. The sixth part of the paper is devoted to a discussion of the future of the theory of spontaneous generation. It is shown that the theory is still a subject of active research and that it is likely to remain one of the most important topics in the history of science.

7. The seventh part of the paper is devoted to a conclusion. It is shown that the theory of spontaneous generation is the most plausible theory of the origin of life and that it is well supported by the facts.